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CUMULATIVE SUPPLEMENT
TO
MISSISSIPPI CODE

1972 ANNOTATED

Issued September 2014

**CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2014 REGULAR SESSION
AND 1ST AND 2ND EXTRAORDINARY SESSIONS**

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Volume 19B

Title 85 to 89

(As Revised 2011)

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

PUBLISHER'S FOREWORD

Statutes

The 2014 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2014 Regular Session and 1st and 2nd Extraordinary Sessions.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

- Southern Reporter, 3rd Series
- United States Supreme Court Reports
- Supreme Court Reporter
- United States Supreme Court Reports, Lawyers' Edition, 2nd Series
- Federal Reporter, 3rd Series
- Federal Supplement, 2nd Series
- Federal Rules Decisions
- Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

- American Law Reports, 6th Series
- American Law Reports, Federal 2nd
- Mississippi College Law Review
- Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

PUBLISHER'S FOREWORD

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2014 Regular Session and 1st and 2nd Extraordinary Sessions.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2014

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SCHEDULE OF NEW SECTIONS

Added in this Supplement

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- SEC.
- 85-7-301. Definitions; lien on causes of action accruing to injured persons for uncompensated traumatic burn care [Repealed effective July 1, 2016].
- 85-7-303. Filing of verified statement; contents; notice [Repealed effective July 1, 2016].
- 85-7-305. Duties of chancery clerk; lien book [Repealed effective July 1, 2016].
- 85-7-307. Effect of covenant not to bring an action; action to enforce lien; affidavit of payment [Repealed effective July 1, 2016].
- 85-7-309. Applicability [Repealed effective July 1, 2016].
- 85-7-311. Effect of Sections 85-7-301 through 85-7-315 on settlement before entry into qualifying hospital [Repealed effective July 1, 2016].
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- 85-7-315. False affidavit required by Section 85-7-307 as perjury [Repealed effective July 1, 2016].
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- 85-7-409. Limitation of recovery of subcontractors against single-family residential homeowner.
- 85-7-411. Attachment of liens to buildings or improvements on leased property.
- 85-7-413. Dissolution of special liens.
- 85-7-415. Discharge of lien by filing bond.
- 85-7-417. Privileges and benefits of partnerships, corporations or associations with respect to special liens on real estate.
- 85-7-419. Waiver and release of lien or bond claim.
- 85-7-421. Expiration of claim of lien if payment action not timely filed; filing cancellation of fully satisfied lien.
- 85-7-423. Shortening the time prescribed in which to file payment action.
- 85-7-425. Computation of time.
- 85-7-427. Enforcement of judgments by special writ of execution.
- 85-7-429. Liability for falsely and knowingly filing claim of lien without just cause.
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upon final payment; affidavit of nonpayment; notice of contest of lien; pre-lien notice to owner.

ARTICLE 23. COMMERCIAL REAL ESTATE BROKER LIEN ACT

SEC.

- 85-7-501. Short title [Repealed effective July 1, 2017].
- 85-7-503. Definitions [Repealed effective July 1, 2017].
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CHAPTER 11. Mississippi Uniform State Tax Lien Registration Act

- 85-11-1. Short title [Effective January 1, 2015].
- 85-11-3. Purpose and scope of chapter [Effective January 1, 2015].
- 85-11-5. Definitions [Effective January 1, 2015].
- 85-11-7. Notice of tax lien; enrollment in tax lien registry [Effective January 1, 2015].
- 85-11-9. Perfection of tax lien; tax lien as authority for issuance of writs and warrants [Effective January 1, 2015].
- 85-11-11. Payments to circuit clerks for service provided to citizens for researching and providing lien information [Effective January 1, 2015].
- 85-11-13. Effect of notice of tax lien; duration of lien; reenrollment of tax lien [Effective January 1, 2015].
- 85-11-15. Cancellation of notice of tax lien upon discovery of administrative issue [Effective January 1, 2015].
- 85-11-17. Release of tax lien; enrollment of new tax lien under certain circumstances [Effective January 1, 2015].
- 85-11-19. Tax lien registry; information to be included; certification of records on the tax lien registry; sale of bulk information appearing on tax lien registry; limitation on uses of tax lien registry information [Effective January 1, 2015].
- 85-11-21. Enrollment on tax lien registry of certain unsatisfied tax liens appearing on county judgment rolls [Effective January 1, 2015].
- 85-11-23. Rules and regulations [Effective January 1, 2015].

TITLE 87. CONTRACTS AND CONTRACTUAL RELATIONS

CHAPTER 7. Improvements to Real Property

- 87-7-7. Contractor negotiation of draft payable to contractor and other parties; written signed authorization of co-payees required; penalties.

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TITLE 89. REAL AND PERSONAL PROPERTY

CHAPTER 12. Uniform Disposition of Unclaimed Property Act

SEC.	
89-12-59.	Certain unclaimed United States savings bonds escheat to state; procedures.



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ANNOTATED

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TITLE 85

DEBTOR-CREDITOR RELATIONSHIP

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CHAPTER 3

Exempt Property

§ 85-3-1. Property exempt from seizure under execution or attachment.

JUDICIAL DECISIONS

2. Exempt personal property generally.

In the event that the term “motor vehicles” was not clear and unambiguous so that the court should employ the canons of statutory construction to interpret the meaning of “motor vehicles” in Miss. Code Ann. § 85-3-1(a), the court found as follows: (1) in other Mississippi statutes, the ordinary use of “motor vehicles” included motorcycles, (2) the Mississippi Legislature used the term “motor vehicles” in § 85-3-1(a) without adding language to include some types of motor vehicles but not others, (3) the sections of the Mississippi Code that discussed motorcycles demonstrated that for the purposes of traffic regulation, conveyance, registration, and taxation, the Mississippi Legislature considered motorcycles to be a type of motor vehicles. Without indication to the contrary, there was no reason to pre-

sume that the Mississippi Legislature had any different intent with respect to its treatment of motorcycles under the Exemption Statute. In re Clemons, 441 B.R. 519 (Bankr. N.D. Miss. 2010).

Term “motor vehicles” is clear and unambiguous and should be given its plain meaning; furthermore, (i) the plain meaning of “motor vehicles” includes motorcycles, (ii) if the Mississippi Legislature had desired to narrow the types of “motor vehicles” affected by the Exemption Statute, Miss. Code Ann. § 85-3-1, it certainly knew how to add restricting language to accomplish that goal, and (iii) accordingly, motorcycles fall within the category “motor vehicles” and as such are a type of tangible personal property included in § 85-3-1. A debtor may, therefore, claim a motorcycle as exempt property pursuant to § 85-3-1. In re Clemons, 441 B.R. 519 (Bankr. N.D. Miss. 2010).

RESEARCH REFERENCES

ALR. Construction and Application of Exemption for Firearms under State Law. 46 A.L.R.6th 401.

Purchase of Annuity by Debtor as Fraud on Creditors. 74 A.L.R.6th 549.

§ 85-3-4. Execution or attachment of wages, salaries or other compensation; limitations.

JUDICIAL DECISIONS

2. Obligee no longer has custody.

Under Miss. Ann. § 85-3-4(2)(a)(i), the trial court erred in ordering 55 percent, rather than 25 percent, withheld from a father's disposable income, because when

a judgment was awarded to the mother for past-due child support, she no longer had custody of the child. *Reasor v. Jordan*, 110 So. 3d 307 (Miss. 2013).

§ 85-3-21. Homestead exemption; land and buildings.

JUDICIAL DECISIONS

6. Rights of survivors.

16. Waiver.

17. Relation to other statutes.

6. Rights of survivors.

Trial court did not err in granting an executrix summary judgment and in determining that the claim of the Mississippi Division of Medicaid was not valid against a decedent's property because the decedent predeceased his children and a grandchild to whom he devised all of his property, and pursuant to the unambiguous language of Miss. Code Ann. §§ 85-3-21, 91-1-19, and 91-1-21, coupled with case law, the homestead, with its exemption, passed from the decedent to his children and grandchildren free of his debts; thus, Medicaid was not entitled to pursue a claim against the exempted property as it was not a part of the estate. *State v. Stinson (In re Estate of Darby)*, 68 So. 3d 702 (Miss. Ct. App. 2011), writ of certiorari denied by 69 So. 3d 767, 2011 Miss. LEXIS 419 (Miss. 2011).

16. Waiver.

Executrix did not waive the homestead exemption by entering into a contractual relationship with the Mississippi Division of Medicaid on behalf of a decedent be-

cause the record did not support the idea that the decedent had any knowledge of the benefits a homestead exemption provided, nor that he intentionally waived his right to the benefit of that exemption since the contract did not provide any information pertaining to, or even mention, the significance of any exemption; there was no evidence of the decedent's intent to waive any of his rights because by entering into the contract, the decedent merely acknowledged Medicaid as a creditor of his estate, which estate had no property against which Medicaid could recover. *State v. Stinson (In re Estate of Darby)*, 68 So. 3d 702 (Miss. Ct. App. 2011), writ of certiorari denied by 69 So. 3d 767, 2011 Miss. LEXIS 419 (Miss. 2011).

17. Relation to other statutes.

Section relation to partition of land prohibits the partition of spousal homestead property by chancery decree because the phrase "homestead property exempt from execution" is not intended to bring specific limitations on creditors' rights to other statutes. Therefore, a chancery court could not enter a partition of land owned by spouses as joint tenants with a right of survivorship. *Noone v. Noone*, 127 So. 3d 193 (Miss. 2013).

CHAPTER 5

Joint and Several Debtors

§ 85-5-7. Limitation of joint and several liability for damages caused by two or more persons; contribution between joint tortfeasors; determination of percentage of fault; liability of medical defendants for economic and noneconomic damages.

JUDICIAL DECISIONS

I. Under § 85-5-7.

3. Instructions to jury.
- 3.5. Verdict forms.
5. Joint and several damages.
6. Miscellaneous.

I. Under § 85-5-7.

3. Instructions to jury.

Circuit court did not err, pursuant to Miss. Code Ann. §§ 85-5-7(5) and 63-3-805, in refusing an apportionment-of-fault jury instruction because the uncontested evidence presented at trial demonstrated that it was one motorist's negligence that was the sole proximate cause of the accident at an intersection and the injuries sustained by the other motorist and the other motorist's spouse. *Dunnam v. Abney*, 137 So. 3d 876 (Miss. Ct. App. 2013), writ of certiorari denied by 2014 Miss. LEXIS 242 (Miss. May 8, 2014).

3.5. Verdict forms.

Trial court's failure to use verdict forms proposed by a law firm, which would have permitted an allocation of fault to each party under the comparative fault law, was reversible error in the contractor's action, alleging legal malpractice and related claims, as the evidence would have permitted an allocation of fault to the various parties. *Baker & McKenzie, LLP v. Evans*, 123 So. 3d 387 (Miss. 2013).

5. Joint and several damages.

Under Mississippi's Dram Shop Act, Miss. Code Ann. § 67-3-73(4) (2005), which required proof that a customer was served alcohol when he was visibly intoxicated, a casino was liable for damages from the customer's car accident as the

expert of the wrongful-death heirs testified that the driver's blood alcohol content was high enough that trained personnel should have spotted the driver's intoxication. However, under Miss. Code Ann. § 85-5-7(3), which was in effect when the suit was filed, joint and several liability was limited to fifty percent of recoverable damages. *Robinson Prop. Group, Ltd. P'ship v. McCalman*, 51 So. 3d 946 (Miss. 2011).

In light of *Fontenot* and Miss. Code Ann. § 85-5-7(5), Mississippi law supports allocation of fault to immune parties, such as an employer in a non-vessel the Longshore and Harbor Workers' Compensation Act, 33 U.S.C.S. § 901 et seq., claim. *Jowers v. Lincoln Elec. Co.*, 617 F.3d 346 (5th Cir. 2010).

6. Miscellaneous.

Trial court erred in granting private contractors summary judgment on the basis that a widow's wrongful death claim would require it to question military decisions because they failed to show that adjudication of a ballistic wall's failure would implicate a political question; the contractors did not show that they would put forward a viable contributory negligence defense because the claim that the wall failed could stand without implicating a decision committed to the military's discretion. *Ghane v. Mid-South Inst. of Self Def. Shooting, Inc.*, 137 So. 3d 212 (Miss. 2014).

Chancellor erred by imposing joint and several liability on a city, lake owners, and a homeowners association for damages to a homeowner's property caused by the failure of a culvert system, as she did not

find that they had colluded to commit a tortious act. *Borne v. Estate of T. L. Carraway*, 118 So. 3d 571 (Miss. 2013).

Grant of summary judgment in favor of the other driver in the passenger's negligence action for injuries that she received in a car accident was inappropriate because an oral surgeon's testimony was admissible; he testified that his opinion was based on his knowledge, skill, experience, training, and education as an orthopedic surgeon and his testimony was sufficient to establish the element of

proximate cause and was admissible for the jury to consider in the apportionment of damages. The other driver, as the driver of the second car to hit the vehicle in which the passenger was riding, was responsible only for the amount of the passenger's damages that were based on his fault allocated by the jury in accord with Miss. Code Ann. § 85-5-7. *Lopez v. McClellan*, — So. 3d —, 2010 Miss. App. LEXIS 214 (Miss. Ct. App. Apr. 27, 2010), appeal dismissed by 2010 Miss. App. LEXIS 480 (Miss. Ct. App. Sept. 7, 2010).

CHAPTER 7

Liens

Article 9.	Water, Oil and Gas Wells	85-7-131
Article 11.	Suits on Performance Bonds	85-7-181
Article 19.	Qualifying Providers of Burn Care Lien for Causes of Action	85-7-301
Article 21.	Special Liens on Real Estate or Other Property	85-7-401
Article 23.	Commercial Real Estate Broker Lien Act	85-7-501

ARTICLE 5.

MECHANICS AND STABLEKEEPERS.

§ 85-7-101. Articles constructed, manufactured or repaired; lien for labor and materials.

JUDICIAL DECISIONS

- 1. In general.
- 7. Actions to enforce liens.

1. In general.

Mechanic's lien and storage lien statutes which were advanced by a party, who repaired and then stored an excavator, did not allow attorney's fees. *Caterpillar Fin. Servs. Corp. v. Burroughs Diesel, Inc.*, 125 So. 3d 659 (Miss. Ct. App. 2013), writ of certiorari denied by 125 So. 3d 658, 2013 Miss. LEXIS 586 (Miss. 2013), writ of certiorari denied by 125 So. 3d 658, 2013 Miss. LEXIS 587 (Miss. 2013).

7. Actions to enforce liens.

Repair company was not entitled to summary judgment on its mechanic's lien

claim under Miss. Code Ann. § 85-7-101, for the labor and material to repair an excavator, because there were genuine issues of material facts in dispute, as the reasonableness or necessity of the repairs was not addressed. *Caterpillar Fin. Servs. Corp. v. Burroughs Diesel, Inc.*, 125 So. 3d 659 (Miss. Ct. App. 2013), writ of certiorari denied by 125 So. 3d 658, 2013 Miss. LEXIS 586 (Miss. 2013), writ of certiorari denied by 125 So. 3d 658, 2013 Miss. LEXIS 587 (Miss. 2013).

§ 85-7-107. Lien on motor vehicle for labor and materials used in constructing, manufacturing or repairing vehicle; notice to legal owner and holder of any lien; judgment on lien; redemption; sale of vehicle.

JUDICIAL DECISIONS

2. Construction with other law.

Defendants were properly convicted of armed robbery (Miss. Code Ann. § 97-3-79) for taking a car from the victim's repair shop at gunpoint; although one

defendant had legal title to the car, the victim had the right of possession of the car through his mechanic's lien under Miss. Code Ann. § 85-7-107. *Veazy v. State*, 113 So. 3d 1226 (Miss. 2013).

ARTICLE 9.

WATER, OIL AND GAS WELLS.

SEC.

- 85-7-131. Liens on water, oil or gas wells; effect as to purchasers, etc., without notice.
- 85-7-133. Chancery clerk to keep record of liens.
- 85-7-135 through 85-7-139. Repealed.
- 85-7-141. Commencement of suit to enforce lien.
- 85-7-143. Parties to the suit.
- 85-7-145. Summons of defendants.
- 85-7-147. Defenses and counterclaims.
- 85-7-149 and 85-7-151. Repealed.

§ 85-7-131. Liens on water, oil or gas wells; effect as to purchasers, etc., without notice.

Every water well or oil and gas well, and any fixed machinery, gearing or other fixture that may or may not be used or connected therewith, shall be liable for services or construction and the debt shall be a lien thereon. As to oil and gas wells, the operator thereof shall have a lien upon the interest of each nonoperator owner of an interest in the mineral leasehold estate for the nonoperator's proportionate part of the labor, material and services rendered by the operator or for the operator's account on behalf of each nonoperator in the drilling, completion, recompletion, reworking or other operations of the oil and gas well. If the structure is a water well, the lien shall extend only to all pumps, pipes, equipment therein and all water well appurtenances. If the structure is an oil or gas well, the lien shall extend to the nonoperator's interest in the mineral estate and the fixtures and equipment in the producing unit assigned to the well by the State Oil and Gas Board. The lien shall take effect, as to purchasers or encumbrancers for a valuable consideration without notice thereof, only from the time of commencing suit to enforce the lien, or from the time of filing the contract under which the lien arose, or notice thereof, in the office of the clerk of the chancery court, as hereinafter stated; delivery of material to the job is prima facie evidence of its use therein, and use

of water from a water well is prima facie evidence of acceptability of the well. In the case of oil and gas wells, the lien shall take effect, as to purchasers or encumbrancers for a valuable consideration without notice thereof, only from the time of filing notice of the lien as provided by Section 85-7-133.

SOURCES: Codes, Hutchinson's 1848, ch. 45, art. 6 (1); 1857, ch. 39, art. 1; 1871, § 1603; 1880, § 1378; 1892, § 2698; 1906, § 3058; Hemingway's 1917, § 2418; 1930, § 2258; 1942, § 356; Laws, 1926, ch. 150; Laws, 1928, ch. 137; Laws, 1962, ch. 488, §§ 1, 2; Laws, 1964, ch. 291; Laws, 1979, ch. 379; Laws, 2010, ch. 372, § 1; Laws, 2014, ch. 487, § 18, eff from and after passage (approved Apr. 11, 2014.)

Amendment Notes — The 2014 amendment rewrote the section, which read: "Every house, building, water well or structure of any kind, and any fixed machinery, gearing or other fixture that may or may not be used or connected therewith, railroad embankment, erected, constructed, altered or repaired, and every subdivision of property or subdivided property which required services, designs or construction in designing or laying out of streets or subdividing or construction of streets, sewerage, water or other utilities to be furnished by the said subdivision or by the various owners or holders or creators of said subdivision or subdivided property or individual lot or lots in connection therewith, whether inside of a municipality or outside thereof, shall be liable for the debt contracted and owing, for labor done or materials furnished or equipment rented or leased, or architectural engineers' and surveyors' or contractors' service rendered about the erection, construction, alteration or repairs thereof; and debt for such services or construction shall be a lien thereon. The architects, engineers, surveyors, laborers, rental or lease equipment suppliers and materialmen and/or contractors who rendered services and constructed the improvements shall have a lien therefor. Further, as to oil and gas wells, the operator thereof shall have such a lien upon the interest of each nonoperator owner of an interest in the mineral leasehold estate for such nonoperator's proportionate part of such labor, material and services rendered by the operator or for the operator's account in behalf of each nonoperator in the drilling, completion, recompletion, reworking or other operations of such oil and gas well. If such house, building, structure, or fixture be in a city, town or village, the lien shall extend to and cover the entire lot of land on which it stands and the entire curtilage thereto belonging; or, if not in a city, town or village, the lien shall extend to and cover one (1) acre of land on which the same may stand, if there be so much, to be selected by the holder of the lien. If the structure be a water well, the lien shall extend only to all pumps, pipes, equipment therein and all water well appurtenances. If the structure be an oil or gas well, the lien shall extend to the nonoperator's interest in the mineral estate and the fixtures and equipment in the producing unit assigned such well by the State Oil and Gas Board. If the structure be a railroad or railroad embankment, the lien shall extend to and cover the entire roadbed and right-of-way, depots and other buildings used or connected therewith. If the services of the architect, surveyor, engineer, laborers, materialmen, rental or lease equipment suppliers or of the contractors shall be upon the whole subdivision, the lien shall extend to and cover the entire subdivision; but if a part only of the land is subdivided and laborers', materialmen's, rental or lease equipment suppliers', architects', surveyors' or engineers' services are required and contractors are employed, then the lien shall extend to only that portion of said property upon which the services were required or upon which or in connection with which the work was done or the materials or rental or lease equipment were furnished. Such lien shall take effect as to purchasers or encumbrancers for a valuable consideration without notice thereof, only from the time of commencing suit to enforce the lien, or from the time of filing the contract under which the lien arose, or notice thereof, in the office of the clerk of the chancery court, as hereinafter stated; delivery of

material to the job is prima facie evidence of its use therein, and use of water from a water well is prima facie evidence of acceptability of the well. In the case of oil and gas wells, such lien shall take effect as to purchasers or encumbrancers for a valuable consideration without notice thereof, only from the time of filing notice of such lien as provided by Section 85-7-133.”

§ 85-7-133. Chancery clerk to keep record of liens.

Each of the several chancery clerks of this state shall provide in his office, as a part of the land records of his county, a record entitled “Notice of Liens” wherein notices under Section 85-7-131 shall be filed and recorded, and the liens shall not take effect until some notation of the lien is filed and recorded in the record showing a description of the property involved, the name of the lienor or lienors, the date of filing, if and where suit is filed, and if and where contract is filed or recorded.

SOURCES: Codes, Hutchinson’s 1848, ch. 45, art. 6 (1); 1857, ch. 39, art. 1; 1871, § 1603; 1880, § 1378; 1892, § 2698; 1906, § 3058; Hemingway’s 1917, § 2418; 1930, § 2258; 1942, § 356; Laws, 1926, ch. 150; Laws, 1928, ch. 137; Laws, 1962, ch. 488, §§ 1, 2; Laws, 1964, ch. 291; Laws, 1994, ch. 521, § 39; Laws, 2014, ch. 487, § 19, eff from and after passage (approved Apr. 11, 2014.)

Amendment Notes — The 2014 amendment substituted “Notice of Liens” for “Notice of Construction Liens” and “the liens shall not take effect until some notation of the lien is filed and recorded in the record” for “such liens, as provided hereunder, shall not take effect unless and until some notation thereof shall be filed and recorded in said record.”

§§ 85-7-135 through 85-7-139. Repealed.

Repealed by Laws, 2014, ch. 487, § 24, effective from and after passage April 11, 2014.

§ 85-7-135. [Codes, 1857, ch. 39, art. 2; 1871, § 1604; 1880, § 1379; 1892, § 2699; 1906, § 3059; Hemingway’s 1917, § 2419; 1930, § 2259; 1942, § 357; Laws, 1926, ch. 150; Laws, 2010, ch. 372, § 2, eff from and after July 1, 2010.]

§ 85-7-137. [Codes, 1857, ch. 39, art. 3; 1871, § 1605; 1880, § 1380; 1892, § 2700; 1906, § 3060; Hemingway’s 1917, § 2420; 1930, § 2260; 1942, § 358.]

§ 85-7-139. [Codes, 1857, ch. 39, art. 5; 1871, § 1607; 1880, § 1382; 1892, § 2701; 1906, § 3061; Hemingway’s 1917, § 2421; 1930, § 2261; 1942, § 359.]

Editor’s Note — Former § 85-7-135 provided that liens under § 85-7-131 (as it appeared prior to the 2014 amendment) exist only in favor of the contractor or an employee.

Former § 85-7-137 provided a lien for construction, alteration or repair of any house or building that was done at the instance of a person not the owner of the property attached only to the house or building and the estate of the person who is not the owner of the property. For present similar provisions, see § 85-7-411.

Former § 85-7-139 provided that a written contract for the construction or repair of a house or building could be recorded.

§ 85-7-141. Commencement of suit to enforce lien.

Any person entitled to and desiring to have the benefit of a lien under Section 85-7-131 shall commence his suit in the circuit or county court of the county in which the property or some part thereof is situated, if the principal of his demand exceeds Two Hundred Dollars (\$200.00), within twelve (12) months next after the time when the money due and claimed by the suit became due and payable following the day on which the last of the labor was performed or material or rental or lease equipment was supplied by the person bringing the action, and not after; and the suit shall be commenced by petition, describing with reasonable certainty the property upon which the lien is averred to exist, and setting out the nature of the contract and indebtedness, and the amount thereof; and the plaintiff shall file therewith in all cases, except where the whole work or materials, or both, were furnished in pursuance of a written contract for an aggregate price, a bill of particulars exhibiting the amount and kind of labor performed, and of materials furnished, and the prices at which and times when the same were performed and furnished; and such suits shall be docketed and conducted as other suits in that court, and may be tried at the first term.

SOURCES: Codes, Hutchinson's 1848, ch. 45, art. 7 (3); 1857, ch. 39, art. 6; 1871, § 1609; 1880, § 1384; 1892, § 2702; 1906, § 3062; Hemingway's 1917, § 2422; 1930, § 2262; 1942, § 360; Laws, 1904, ch. 152; Laws, 2011, ch. 457, § 1; Laws, 2014, ch. 487, § 20, eff from and after passage (approved Apr. 11, 2014.)

Amendment Notes — The 2014 amendment substituted “a” for “such” and inserted “under Section 85-7-131” preceding “shall commence his suit” near the beginning; and substituted “that” for “said” near the end.

JUDICIAL DECISIONS**7. Limitations.**

Dismissal of a suit seeking to enforce a construction lien was proper as: (1) the original complaint (OC) did not name the real party in interest under Miss. R. Civ. P. 17(a), the current owner (CO) of the building; (2) the prior owner had conveyed the property before the OC was filed; (3) the amended complaint (AC) was time-barred as it was not served on the CO

until after the Miss. Code Ann. § 85-7-141 limitations period expired; (4) due to the lack of timely service under Miss. R. Civ. P. 4(h), the AC did not relate back to the OC's filing under Miss. R. Civ. P. 15(c); and (5) the contractor did not show good cause for the delayed service. *Welch Roofing & Constr., Inc. v. Farina*, 99 So. 3d 274 (Miss. Ct. App. Oct. 16, 2012).

§ 85-7-143. Parties to the suit.

All persons having an interest in the controversy, and all persons claiming liens on the same property, by virtue of Section 85-7-131, shall be made parties to the suit; and should any necessary or proper party be omitted, he may be brought in by amendment, on his own application or that of any other party interested; and claims of several parties having liens on the same property may be joined in the same action.

SOURCES: Codes, 1857, ch. 39, art 7; 1871, § 1610; 1880, § 1385; 1892, § 2703; 1906, § 3063; Hemingway's 1917, § 2423; 1930, § 2263; 1942, § 361; Laws, 2014, ch. 487, § 21, eff from and after passage (approved Apr. 11, 2014.)

Amendment Notes — The 2014 amendment substituted “Section 85-7-131” for “this chapter.”

§ 85-7-145. Summons of defendants.

In all actions to enforce a lien granted by Section 85-7-131, the defendants shall be summoned, as in other actions at law, to appear and defend the action; and in case any necessary party defendant shall be a nonresident of or absent from the state, or cannot be found, he may be made a party by publication, as in cases of nonresident or absent defendants in chancery, requiring him to appear on a day to be therein named; and in default of appearance, the same proceedings shall be had as if the defendant had been duly summoned and made default.

SOURCES: Codes, 1857, ch. 39, art. 8; 1871, § 1611; 1880, § 1386; 1892, § 2704; 1906, § 3064; Hemingway's 1917, § 2424; 1930, § 2264; 1942, § 362; Laws, 2014, ch. 487, § 22, eff from and after passage (approved Apr. 11, 2014.)

Amendment Notes — The 2014 amendment added “In all actions to enforce a lien granted by Section 85-7-131” to the beginning and substituted “the” for “such” near the end.

§ 85-7-147. Defenses and counterclaims.

In all actions to enforce a lien granted by Section 85-7-131, the defendants, or any of them, by answer to the petition, may make any defense they may have against the demand of the plaintiff, and also any counterclaim against him touching the subject-matter of the suit. And should any defendant claim to have a lien upon the same property, for materials furnished or labor done thereon, he may present the lien by his answer; and the cause shall be at issue without a replication, and the parties shall be confined at the trial to the cause of action and defense set forth in the pleadings.

SOURCES: Codes, 1857, ch. 39, art. 9; 1871, § 1612; 1880, § 1387; 1892, § 2705; 1906, § 3065; Hemingway's 1917, § 2425; 1930, § 2265; 1942, § 363; Laws, 2014, ch. 487, § 23, eff from and after passage (approved Apr. 11, 2014.)

Amendment Notes — The 2014 amendment added “In all actions to enforce a lien granted by Section 85-7-131” to the beginning of the first sentence and substituted “lien” for “same” in the middle of the second sentence.

§§ 85-7-149 and 85-7-151. Repealed.

Repealed by Laws 2014, ch. 487, § 24, effective upon approval April 11, 2014.

§ 85-7-149. [Codes, 1857, ch. 39, art. 10; 1871, § 1613; 1880, § 1388; 1892, § 2706; 1906, § 3066; Hemingway's 1917, § 2426; 1930, § 2266; 1942, § 364.]

§ 85-7-151. [Codes, 1857, ch. 39, art. 11; 1871, § 1614; 1880, § 1389; 1892, § 2707; 1906, § 3067; Hemingway's 1917, § 2427; 1930, § 2267; 1942, § 365; Laws, 1987, ch. 392, § 1, eff from and after July 1, 1987.]

Editor's Note — Former § 85-7-149 related to jury trial for actions to enforce liens and the applicability of rules of evidence and practice.

Former § 85-7-151 related to costs and attorneys' fees.

ARTICLE 11.

SUITS ON PERFORMANCE BONDS.

SEC.

85-7-181 through 85-7-185. Repealed.

85-7-197 through 85-7-201. Repealed.

§§ 85-7-181 through 85-7-185. Repealed.

Repealed by Laws 2014, ch. 487, § 24, effective upon approval April 11, 2014.

§ 85-7-181. [Codes, 1880, § 1381; 1892, § 2714; 1906, § 3074; Hemingway's 1917, § 2434; 1930, § 2274; 1942, § 372; Laws, 1904, ch. 153; Laws, 1918, ch. 128; Laws, 1987, ch. 392, § 2; Laws, 2010, ch. 372, § 3, eff from and after July 1, 2010.]

§ 85-7-183. [Codes, Hemingway's 1921 Supp. § 2434a; 1930, § 2275; 1942, § 373; Laws, 1918, ch. 128.]

§ 85-7-185. [Codes, Hemingway's 1921 Supp. § 2434b; 1930, § 2276; 1942, § 374; Laws, 1918, ch. 128; Laws, 2010, ch. 372, § 4; Laws, 2012, ch. 357, § 1, eff from and after July 1, 2012.]

Editor's Note — Former § 85-7-181 related to subcontractor's written notice to property owner of amount due subcontractor by contractor and suit.

Former § 85-7-183 prohibited assignments of a contract or proceeds by contractors.

Former § 85-7-185 related to contractor or subcontractor bonds guaranteeing performance of contract and prompt payment of all persons furnishing labor or materials or equipment under the contract.

§§ 85-7-197 through 85-7-201. Repealed.

Repealed by Laws 2014, ch. 487, § 24, effective upon approval April 11, 2014.

§ 85-7-197. [Codes, 1930, § 2282; 1942, § 380; Laws, 1928, ch. 136; Laws, 1984, ch. 319, eff from and after July 1, 1984..]

§ 85-7-199. [Codes, 1930, § 2283; 1942, § 381; Laws, 1928, ch. 136.]

§ 85-7-201. [Codes, 1930, § 2284; 1942, § 382; Laws, 1928, ch. 136.]

Editor's Note — Former § 85-7-197 provided that liens may be recorded in the pendens record.

Former § 85-7-199 related to the entry of satisfaction when liens are paid or extinguished.

Former § 85-7-201 related to penalties for filing a false notice and action to expunge.

ARTICLE 15.

TOWING AND STORAGE OF MOTOR VEHICLES.

§ 85-7-251. Sale of motor vehicle for towing and storage cost; notice requirement.

JUDICIAL DECISIONS

0.5. In general.

Because issues regarding the possessory rights of the parties remained unresolved, remand for a new trial on the merits was warranted to determine which party had a superior possessory right, under Miss. Code Ann. §§ 11-37-101 and 85-7-251, to vehicles which a towing company towed from an auto repairman's leased premises at the landlord's direction. *Crowell v. Butts*, — So. 3d —, 2013 Miss. App. LEXIS 866 (Miss. Ct. App. Dec. 10, 2013).

Mechanic's lien and storage lien statutes which were advanced by a party, who repaired and then stored an excavator, did not allow attorney's fees. *Caterpillar Fin. Servs. Corp. v. Burroughs Diesel, Inc.*, 125 So. 3d 659 (Miss. Ct. App. 2013), writ of certiorari denied by 125 So. 3d 658, 2013

Miss. LEXIS 586 (Miss. 2013), writ of certiorari denied by 125 So. 3d 658, 2013 Miss. LEXIS 587 (Miss. 2013).

Summary judgment award for a lien against an excavator for storage costs was inappropriate because there was nothing in the stipulation before the county court about storage costs. The affidavits and materials filed in support of the motion for summary judgment discussed storage costs, but did not satisfy the statutory requirements of Miss. Code Ann. § 85-7-251. *Caterpillar Fin. Servs. Corp. v. Burroughs Diesel, Inc.*, 125 So. 3d 659 (Miss. Ct. App. 2013), writ of certiorari denied by 125 So. 3d 658, 2013 Miss. LEXIS 586 (Miss. 2013), writ of certiorari denied by 125 So. 3d 658, 2013 Miss. LEXIS 587 (Miss. 2013).

ARTICLE 19.

QUALIFYING PROVIDERS OF BURN CARE LIEN FOR CAUSES OF ACTION.

SEC.

- 85-7-301. Definitions; lien on causes of action accruing to injured persons for uncompensated traumatic burn care [Repealed effective July 1, 2016].
- 85-7-303. Filing of verified statement; contents; notice [Repealed effective July 1, 2016].
- 85-7-305. Duties of chancery clerk; lien book [Repealed effective July 1, 2016].
- 85-7-307. Effect of covenant not to bring an action; action to enforce lien; affidavit of payment [Repealed effective July 1, 2016].
- 85-7-309. Applicability [Repealed effective July 1, 2016].
- 85-7-311. Effect of Sections 85-7-301 through 85-7-315 on settlement before entry into qualifying hospital [Repealed effective July 1, 2016].
- 85-7-313. No independent right of action to determine liability for injuries [Repealed effective July 1, 2016].

- 85-7-315. False affidavit required by Section 85-7-307 as perjury [Repealed effective July 1, 2016].
- 85-7-317. Repeal of Sections 85-7-301 through 85-7-315.

§ 85-7-301. Definitions; lien on causes of action accruing to injured persons for uncompensated traumatic burn care [Repealed effective July 1, 2016].

(1) Except where the context otherwise requires in subsection (2) of this section, as used in Sections 85-7-301 through 85-7-315, the term:

(a) “Qualifying hospital” means any hospital designated as a burn center by the State Department of Health.

(b) “Qualifying practice” means any physician practice that provides care, treatment or services to a patient who has been admitted to a qualifying hospital.

(c) “Care, treatment or services” means burn care or burn-related treatment, or services furnished by a qualifying hospital or qualifying practice.

(d) “Uncompensated traumatic burn care” means any portion of care, treatment or services rendered by a qualifying hospital or qualifying practice with respect to a patient whose burn care, treatment or services arose out of a single accident or occurrence for which the qualifying hospital or qualifying practice did not receive payment.

(2) Any person, firm, authority or corporation operating a qualifying hospital or qualifying practice providing traumatic burn care in this state shall have a lien for the reasonable charges for care, treatment or services of an injured person for uncompensated traumatic burn care, which lien shall be only upon any and all causes of action accruing to the person to whom the care was furnished or to the legal representative of the person on account of injuries that gave rise to the causes of action and that necessitated the care, treatment or services, subject and subordinate, however, to any attorney’s lien or fees. The lien provided for in this subsection is only a lien against those causes of action and shall not be a lien against the injured person, the legal representative, or any other property or assets of those persons and shall not be evidence of the person’s failure to pay a debt. This subsection shall not be construed to interfere with the exemption from Sections 85-7-301 through 85-7-315 provided by Section 85-7-309, nor shall this subsection prohibit an injured person or his legal representative from negotiating with a qualifying hospital or practice.

SOURCES: Laws, 2013, ch. 512, § 1, eff from and after July 1, 2013.

Editor’s Note — For repeal of this section see § 85-7-317.

§ 85-7-303. Filing of verified statement; contents; notice [Repealed effective July 1, 2016].

(1) In order to perfect the lien provided for in Section 85-7-301, the operator of the qualifying hospital or qualifying practice:

(a) Shall, not less than fifteen (15) days before the date of filing the statement required under paragraph (b) of this subsection, provide written notice to the patient and the legal representative of the patient, if applicable, and, to the best of the operator's knowledge, the persons, firms, corporations and their insurers claimed by the injured person or the legal representative of the injured person to be liable for damages arising from the injuries and shall include in the notice a statement that the lien is not a lien against the patient or any other property or assets of the patient and is not evidence of the patient's failure to pay a debt. The notice shall be sent to all those persons and entities by first-class and certified mail or statutory overnight delivery, return receipt requested; and

(b) Shall file in the office of the clerk of the chancery court of the county in which the qualifying hospital or qualifying practice is located and in the county in which the patient resides, if a resident of this state, a verified statement setting forth the name and address of the patient as it appears on the records of the qualifying hospital or qualifying practice; the name and location of the qualifying hospital or qualifying practice, and the name and address of the operator thereof; the dates of admission and discharge of the patient from the qualifying hospital, or with respect to a qualifying practice, the dates of treatment; the amount claimed to be due for the qualifying hospital or qualifying practice; and certification that the amount claimed is for treatment of uncompensated traumatic burn care, which statement must be filed within the following time period:

(i) If the statement is filed by a qualifying hospital, then the statement shall be filed within seventy-five (75) days after the person has been discharged from the facility; or

(ii) If the statement is filed by a qualifying practice, then the statement shall be filed within ninety (90) days after the person first sought treatment from the practice for the injury.

(2) The filing of the claim or lien shall be notice thereof to all persons, firms or corporations liable for the damages, whether or not they received the written notice provided for in this section. The failure to perfect the lien by timely complying with the notice and filing provisions of subsection (1) of this section shall invalidate the lien, except as to any person, firm, or corporation liable for the damages, which receives before the date of any release, covenant not to bring an action, or settlement, actual notice of a notice and filed statement made under subsection (1) of this section, via hand delivery, certified mail, return receipt requested, or statutory overnight delivery with confirmation of receipt.

SOURCES: Laws, 2013, ch. 512, § 2, eff from and after July 1, 2013.

Editor's Note — For repeal of this section see § 85-7-317.

§ 85-7-305. Duties of chancery clerk; lien book [Repealed effective July 1, 2016].

The clerk of the chancery court shall endorse the date and hour of filing on the statement filed under Section 85-7-303; and, at the expense of the county, the clerk shall provide a lien book with a proper index in which the clerk shall enter the date and hour of the filing; the names and addresses of the qualifying hospital or qualifying practice, the operators thereof, and the patient; and the amount claimed. The information shall be recorded in the name of the patient.

SOURCES: Laws, 2013, ch. 512, § 3, eff from and after July 1, 2013.

Editor's Note — For repeal of this section see § 85-7-317.

§ 85-7-307. Effect of covenant not to bring an action; action to enforce lien; affidavit of payment [Repealed effective July 1, 2016].

(1) No release of the cause or causes of action or of any judgment thereon or any covenant not to bring an action thereon shall be valid or effectual against the lien created by Section 85-7-301 unless the holder thereof is given notification of the results of the cause of action or executes a release of the lien; and the injured party (the "claimant") or an assignee of the lien holder may enforce the lien by an action against the person, firm or corporation liable for the damages or the person, firm or corporation's insurer. If the claimant prevails in the action and if the claimant's balance of the award is insufficient to cover the medical liens, the court may determine pro rata compensation in favor of the claimant. In no case shall the payment towards the liens exceed fifty percent (50%) of the claimant's balance. Any qualifying hospital or qualifying practice that receives payments under the authority of Sections 85-7-301 through 85-7-315, shall release the claimant from any further liens for the cost of hospital care, treatment or services provided for which the lien was placed. The action shall be begun against the person liable for the damages or the person's insurer within one (1) year after the date the liability is finally determined by a settlement, by a release, by a covenant not to bring an action, or by the judgment of a court of competent jurisdiction.

(2) No release or covenant not to bring an action that is made before or after the patient was discharged from the qualifying hospital or qualifying practice shall be effective against the lien perfected in accordance with Section 85-7-303, if the lien is perfected before the date of the release, covenant not to bring an action, or settlement unless notification is given to the qualifying hospital or qualifying practice; however, any person, firm or corporation that consummates a settlement, release or covenant not to bring an action with the person to whom care, treatment or services were furnished and that first procures from the injured party an affidavit as prescribed in subsection (3) of

this section shall not be bound or otherwise affected by the lien except as provided in subsection (3) of this section, regardless of when the settlement, release or covenant not to bring an action was consummated.

(3) The affidavit shall affirm:

(a) That all bills incurred for treatment for the injuries for which a settlement is made have been fully paid or resolved; and

(b) The county of residence of the affiant, if a resident of this state; however, the person taking the affidavit shall not be protected thereby where the affidavit alleges the county of the affiant's residence and the lien of the qualifying hospital or qualifying practice is at that time on file in the office of the chancery clerk and is recorded in the name of the patient as it appears in the affidavit.

SOURCES: Laws, 2013, ch. 512, § 4, eff from and after July 1, 2013.

Editor's Note — For repeal of this section see § 85-7-317.

§ 85-7-309. Applicability [Repealed effective July 1, 2016].

Sections 85-7-301 through 85-7-315 shall not apply to:

(a) A cause of action filed by a person who received care, treatment or services from a qualifying hospital or a qualifying practice whose medical costs were paid by the Centers for Medicare and Medicaid Services.

(b) Any monies becoming due under the Workers' Compensation Law.

SOURCES: Laws, 2013, ch. 512, § 5, eff from and after July 1, 2013.

Editor's Note — For repeal of this section see § 85-7-317.

§ 85-7-311. Effect of Sections 85-7-301 through 85-7-315 on settlement before entry into qualifying hospital [Repealed effective July 1, 2016].

No settlement or release entered into or executed before the entry of the injured party into the qualifying hospital shall be affected by or subject to the terms of Sections 85-7-301 through 85-7-315.

SOURCES: Laws, 2013, ch. 512, § 6, eff from and after July 1, 2013.

Editor's Note — For repeal of this section see § 85-7-317.

§ 85-7-313. No independent right of action to determine liability for injuries [Repealed effective July 1, 2016].

Sections 85-7-301 through 85-7-315 shall not be construed to give any qualifying hospital or qualifying practice an independent right of action to determine liability for injuries sustained by a person or firm.

SOURCES: Laws, 2013, ch. 512, § 7, eff from and after July 1, 2013.

Editor's Note — For repeal of this section see § 85-7-317.

§ 85-7-315. False affidavit required by Section 85-7-307 as perjury [Repealed effective July 1, 2016].

Any person who gives any false affidavit as provided by Section 85-7-307 commits the offense of perjury.

SOURCES: Laws, 2013, ch. 512, § 8, eff from and after July 1, 2013.

Editor's Note — For repeal of this section see § 85-7-317.

§ 85-7-317. Repeal of Sections 85-7-301 through 85-7-315.

Sections 85-7-301 through 85-7-315 shall stand repealed on July 1, 2016.

SOURCES: Laws, 2013, ch. 512, § 9, eff from and after July 1, 2013.

ARTICLE 21.

SPECIAL LIENS ON REAL ESTATE OR OTHER PROPERTY.

SEC.	
85-7-401.	Definitions.
85-7-403.	Special lien on real estate or other property for labor, services or materials furnished.
85-7-405.	Creation and declaration of lien; requisite statement and notice; payment action; amendment of claim of lien; priority of liens.
85-7-407.	Contractors to furnish list of all subcontractors and materialmen upon written request of property owner; information to be provided by persons not having privity of contract with contractor; applicability of section.
85-7-409.	Limitation of recovery of subcontractors against single-family residential homeowner.
85-7-411.	Attachment of liens to buildings or improvements on leased property.
85-7-413.	Dissolution of special liens.
85-7-415.	Discharge of lien by filing bond.
85-7-417.	Privileges and benefits of partnerships, corporations or associations with respect to special liens on real estate.
85-7-419.	Waiver and release of lien or bond claim.
85-7-421.	Expiration of claim of lien if payment action not timely filed; filing cancellation of fully satisfied lien.
85-7-423.	Shortening the time prescribed in which to file payment action.
85-7-425.	Computation of time.
85-7-427.	Enforcement of judgments by special writ of execution.
85-7-429.	Liability for falsely and knowingly filing claim of lien without just cause.
85-7-431.	Payment bond as substitution for subcontractor or materialmen liens.
85-7-433.	Forms; interim waiver and release upon payment; waiver and release upon final payment; affidavit of nonpayment; notice of contest of lien; pre-lien notice to owner.

§ 85-7-401. Definitions.

The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) “Business day” means any day that is not a Saturday, Sunday, or legal holiday.

(b) “Contractor” means a contractor having privity of contract with the owner or lessee of the real estate.

(c) “Lien action” means a civil action against the owner of improved property to perfect and make permanent the lien created by Section 85-7-403.

(d) “Payment action” means a lawsuit, proof of claim in a bankruptcy case, or a binding arbitration.

(e) “Professional surveyor” has the meaning given in Section 73-13-71.

(f) “Materials” means materials, tools, appliances, machinery, or equipment used in making improvements to the real estate.

(g) “Materialmen” or “materialman” means all persons furnishing the materials, tools, appliances, machinery, or equipment included in the definition of materials to a contractor or to a subcontractor in privity with the contractor.

(h) “Professional engineer” has the meaning given in Section 73-13-3.

(i) “Residential property” means single-family and two-family, three-family, and four-family residential real estate.

(j) “Statutory overnight delivery” means delivery of a document through the United States Postal Service or through a commercial firm that is regularly engaged in the business of document delivery or document and package delivery in which the sender:

(i) Has directed that delivery be not later than the next business day following the day on which the document is received for delivery by the United States Postal Service or the commercial firm; and

(ii) Receives a receipt acknowledging receipt of the document signed by addressee or an agent of the addressee.

(k) “Subcontractor” means subcontractors having privity of contract with the contractor; “subcontractor” also means subcontractors having privity of contract with a subcontractor having privity of contract with the contractor.

(l) “Registered architect” has the meaning given in Section 73-1-3.

(m) “Design professional” includes professional surveyors, professional engineers and registered architects.

SOURCES: Laws, 2014, ch. 487, § 1, eff from and after passage (approved Apr. 11, 2014.)

Editor’s Note — Laws of 2014, ch. 487, § 25, provides:

“SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972.”

§ 85-7-403. Special lien on real estate or other property for labor, services or materials furnished.

(1) The following persons shall each have a special lien on the real estate or other property for which they furnish labor, services or materials:

(a) All contractors, all subcontractors and all materialmen furnishing material for the improvement of real estate;

(b) All registered architects or professional engineers furnishing plans, drawings, designs, or other architectural or engineering services on or with respect to any real estate;

(c) All registered land surveyors performing or furnishing services on or with respect to any real estate.

(2) Each special lien specified in subsection (1) of this section may attach to the real estate of the owner for which the labor, services or materials are furnished if they are furnished at the instance of the owner, design professional or contractor or a subcontractor having direct privity of contract with a contractor, and shall include the value of work done and labor, services or materials furnished.

(3) Each special lien specified in subsection (1) of this section shall be limited to the amount due and owing the lien claimant under the terms of its express or oral contract, subcontract or purchase order subject to Section 85-7-405(4).

(4) Each special lien specified in subsection (1) of this section shall include interest on the principal amount due in accordance with Section 75-17-1, 75-17-7 or 75-17-19 as applicable by law.

(5) Notwithstanding any other provision of this article, no lien shall exist in favor of any contractor or subcontractor who is not licensed as required by either Section 31-3-1 et seq., or Section 73-59-1 et seq., or who contracts with any contractor or subcontractor who is not licensed as required. Upon request, any contractor or subcontractor is required to provide any owner, contractor, subcontractor or materialman a copy of that person's current license.

SOURCES: Laws, 2014, ch. 487, § 2, eff from and after passage (approved Apr. 11, 2014.)

Editor's Note — Laws of 2014, ch. 487, § 25, provides:

“SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972.”

§ 85-7-405. Creation and declaration of lien; requisite statement and notice; payment action; amendment of claim of lien; priority of liens.

(1) To make good a lien created in Section 85-7-403(1), it must be created and declared in accordance with the following provisions, and on failure of any of them the lien shall not be effective or enforceable:

(a) A substantial compliance by the party claiming the lien with the party's contract, subcontract or purchase order for work performed or labor,

services or material provided in the building, repairing, or improving of real estate; for architectural services furnished; for registered land surveying or registered professional engineering services furnished or performed; or for materials or machinery furnished;

(b) The filing for record of the claim of lien in the office of the clerk of the chancery court of the county where the property is located within ninety (90) days after the claimant's last work performed, labor, services or materials provided, the furnishing of architectural services, or the furnishing or performing of surveying or engineering services. The lien shall include a statement regarding its expiration pursuant to Section 85-7-421(1) and a notice to the owner of the property on which a claim of lien is filed that the owner has the right to contest the lien; the absence of the statement or notice shall invalidate the lien. The claim shall be in substance as follows:

"A.B., a mechanic, contractor, subcontractor, materialman, machinist, manufacturer, registered architect, registered forester, registered land surveyor, registered professional engineer, or other person (as the case may be) claims a lien in the amount of (specify the amount claimed) on the building, structure, house, factory, mill, machinery, or railroad (as the case may be) and the premises or real estate on which it is erected or built, of C.D. (describing the houses, premises, real estate, or railroad), for satisfaction of a claim which became due on (specify the date the claim was due, which is the same as the last date the labor, services or materials were supplied to the premises) for work performed or labor, services provided (or whatever the claim may be).

THIS CLAIM OF LIEN EXPIRES AND IS VOID ONE HUNDRED EIGHTY (180) DAYS FROM THE DATE OF FILING OF THE CLAIM OF LIEN IF A PAYMENT ACTION IS NOT FILED BY THE CLAIMANT WITHIN THAT TIME PERIOD.

NOTICE TO OWNER OF PROPERTY: You have the right to contest this claim of lien pursuant to Mississippi law."

No later than two (2) business days after the claim of lien is filed of record, the lien claimant shall send a true and accurate copy of the claim of lien by registered or certified mail or statutory overnight delivery to the owner of the property or, if the owner's address cannot be found, the contractor, as the agent of the owner; if the property owner is an entity on file with the Secretary of State's office, sending a copy of the claim of lien to the entity's address or the registered agent's address shall satisfy this requirement. If the lien claimant is not the contractor, he shall also send a copy of the claim of lien within two (2) business days by registered or certified mail or statutory overnight delivery to the contractor or to the contractor's registered agent.

(c)(i) A payment action for the recovery of the amount of the lien claimant's claim against the party he contracted with shall be commenced in county, circuit or chancery court within one hundred eighty (180) days from the date of filing for record of the lien claimant's claim of lien. A lis pendens notice shall be filed with the commencement of the action with a copy to the owner and contractor;

(ii) The payment action shall be commenced by summons and complaint. The defendants shall be summoned, as in other actions at law, to appear and defend the action; and in case any necessary party defendant shall be a nonresident of or absent from the state, or cannot be found, he may be made a party by publication, as in cases of nonresident or absent defendants in chancery, requiring him to appear on a day to be therein named; and in default of appearance, the same proceedings shall be had as if the defendant had been duly summoned and made default;

(iii) Nothing in this paragraph (c) shall prejudice the parties' contractual rights to arbitration, as applicable;

(d)(i) The commencement of a payment action under paragraph (c) is not required if the owner has not made payment to the contractor and the lien claimant cannot secure a final judgment against the party with whom the lien claimant contracted because:

1. The party has been adjudicated a bankrupt;

2. If an individual, the party is deceased; or

3. Payment is not due to the lien claimant under the applicable contract agreement until after payment is received by the party with whom the lien claimant contracted.

(ii) If paragraph (d) (i) of this section applies, the person or persons furnishing labor, services or materials may enforce the lien directly against the property in a lien action against the owner if it is filed within the required time for filing a payment action, with the judgment rendered in the proceeding to be limited to a judgment in rem against the property improved and to impose no personal liability upon the owner of the property. A lis pendens notice shall be filed with the commencement of this lien action with a copy to the owner and the contractor.

(iii) Nothing in this paragraph (d) shall impact or negate the rights and defenses available pursuant to Section 85-7-413 or 85-7-419.

(e) A claim of lien may be amended at any time to increase or reduce the amount claimed, and the amended claim of lien shall relate back to the date of filing for record of the original claim of lien. An amended claim of lien filed for record pursuant to this subsection shall be sent to the owner of the property in the same manner as required for a claim of lien in subsection (1) (b) of this section and shall be in substance as follows:

"That certain claim of lien filed by A.B. against property of C.D. on (date) and recorded at book (book#), page (page#) in the lien index of (name of county) County is hereby amended by increasing/reducing (cross out one) the amount of the claim of lien to (specify reduced amount claimed). The remaining terms of the original claim of lien are hereby incorporated by reference into this amended claim of lien. This amended claim of lien relates back to the date that the original claim of lien was filed for record."

(2)(a) The liens specified in Section 85-7-403 ("construction liens") shall be inferior to liens for taxes, but construction liens shall be superior in priority to all other liens except as specified in subsection (2) (b) and (c).

(b) Except as provided in subsection (2)(c), a construction lien shall have priority over all other liens, deeds of trust, mortgages or encumbrances

filed after the date and time of the filing of the notice of lien in the office of the chancery clerk of the county in which the land is located. All liens, deeds of trust, mortgages and encumbrances filed before the date and time of the filing of the notice of construction lien shall have priority over the construction lien, whether the work secured by the lien was performed before or after the filing of the lien, deed of trust, mortgage or other encumbrance. This priority will extend to amendments or restatements and assignments of the lien, deed of trust, mortgage and other encumbrance. The priorities in this subsection are determined by the date and time of filing and without regard to the actual knowledge of the parties of unrecorded liens. Enforcement of a construction lien shall not affect any prior deeds of trust or other liens, and a purchaser, in connection with the enforcement of a construction lien, shall take the property subject to any prior liens, deeds of trust, mortgages or encumbrances of which the purchaser has actual or constructive notice on the date of the purchase. Foreclosure of any prior deeds of trust or other liens shall terminate and extinguish the subordinate construction lien or other interest as to the land and the buildings and improvements thereon, whether or not at the time of the foreclosure the construction lien or interest has been perfected in accordance with the provisions of this article, and the subordinate lienholder shall have the rights in any excess proceeds received by the foreclosing lienholder as provided by law.

(c) A deed of trust, mortgage, assignment of leases and rents, fixture filing or other security agreement affecting real property is a construction mortgage to the extent it secures a loan or loans for the purpose of financing the repair or construction of an improvement on the real property, which may include the acquisition cost of the real property. A construction lien is subordinate to a construction mortgage if the construction mortgage is filed in the land records before a notice of a claim of lien is filed pursuant to Section 85-7-405 and the lender, secured party, mortgagee, beneficiary or holder of the construction mortgage obtained either: (i) an affidavit or sworn statement from the owner to the effect that no work has been performed on, or materials delivered to, the real property; or (ii) an affidavit or sworn statement from the contractor, or owner if there is no contractor, as provided in Section 85-7-413(1) (b) regarding payment for work, materials or services provided. A construction mortgage has this priority for all loan advances secured thereby regardless of whether the advances are made before or after the filing of a notice of a construction lien, and this priority will extend to amendments, restatements and refinancings of the construction mortgage.

(3)(a) Following compliance with the requirements of subsection (1) of this section, in any proceeding against the owner to enforce a lien created by Section 85-7-403 against the property, the party having a direct contractual relationship with the lien claimant shall not be a necessary party, but may be made a party. The design professional, contractor or subcontractor, or all of them, may intervene in the proceedings at any time before judgment for the purpose of resisting the establishment of the lien or of asserting against the lien claimant any claim of the contractor or subcontractor growing out of

or related to the contract, subcontract or purchase order upon which the asserted lien is based.

(b) Any party to an action against the owner to enforce a lien against the property, by appropriate plea, may put in issue the fact of indebtedness or the existence of the lien, or both, and may interpose any other defense or join any counterclaim applicable to the action; and if the court by its finding, or the jury by their verdict, as the case may be, ascertain that the plaintiff has a lien as claimed, judgment shall be entered for the amount secured thereby, plus interest and costs, against the party liable for the same.

(c) The court, in its discretion, may award reasonable costs, interest and attorney's fees to the prevailing party in an action against the owner to enforce a lien against the property.

(d) All liens arising under Section 85-7-403 shall have an equal priority, and be first paid out of the proceeds of the sale of the property, or money collected from the owner; and if the proceeds and money are insufficient to satisfy the liens in full, the proceeds and money shall be distributed pro rata among the claimants thereof or as otherwise ordered by the court.

(4) In no event shall the aggregate amount of liens created by Section 85-7-403 exceed the contract price as determined by the terms of the contract or other agreement between the owner and contractor for the improvements made or services performed.

(5)(a) If payments have been made in reliance upon either lien waivers issued by lien claimants pursuant to Section 85-7-413(1) (a) or sworn written statements of the contractor pursuant to Section 85-7-413(1) (b), the aggregate amount of liens created by Section 85-7-403 in favor of subcontractors and materialmen who are not in privity of contract with the owner shall not exceed the unpaid balance of the contract price under the terms of the contract or agreement between the owner and the contractor at the time the first notice of lien is filed pursuant to this section.

(b) If payments have been made in reliance upon either lien waivers issued by lien claimants pursuant to Section 85-7-413(1) (a) or sworn written statements of the contractor pursuant to Section 85-7-413(1) (b), the aggregate amount of liens created by Section 85-7-403 in favor of design professionals who are not in privity of contract with the owner shall not exceed the unpaid balance of the contract price under the terms of the contract or agreement between the owner and the design professional who is in privity of contract with the owner at the time the first notice of lien is filed pursuant to this section.

SOURCES: Laws, 2014, ch. 487, § 3, eff from and after passage (approved Apr. 11, 2014.)

Editor's Note — Laws of 2014, ch. 487, § 25, provides:

“SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972.”

§ 85-7-407. Contractors to furnish list of all subcontractors and materialmen upon written request of property owner; information to be provided by persons not having privity of contract with contractor; applicability of section.

(1) Upon the written request of the property owner by registered or certified mail or statutory overnight delivery, the contractor shall furnish to the owner a complete list of all subcontractors and materialmen and upon written request from the contractor, all subcontractors shall provide the same information. If the contractor or subcontractor willfully fails or refuses to furnish the list or to give the information to the owner or contractor within a reasonable time, he shall thereby forfeit his right to a lien under this article. Similarly, if the contractor or subcontractor fails to pay any materialman or subcontractor in direct privity with him in accordance with any contract, subcontract or purchase order specifically requiring him to do so, he shall thereby forfeit his right to a lien under this article.

(2) For any person having a right to a lien pursuant to Section 85-7-403 who does not have privity of contract with the contractor, or, if there is no contractor, with the owner, and is providing labor, services or materials for the improvement of property, within thirty (30) days following the first delivery of labor, services or materials to the property, the person shall give a written notice to the contractor, or, if there is no contractor, to the owner, either by e-mail with a confirmed receipt, registered or certified mail, or statutory overnight delivery setting forth the following:

(a) The name, address, and telephone number of the person providing labor, services or materials;

(b) The name and address of each person at whose instance the labor, services or materials are being furnished;

(c) The name of the project and location of the project to which labor, services or materials are provided; and

(d) A description of the labor, services or materials being provided and, if known, the contract price or anticipated value of the labor, services or materials to be provided.

If the person not in privity of contract with the contractor fails to provide the required notice to the contractor, he shall thereby forfeit his right to a lien under this article.

(3) When a claimant is requested to execute a waiver and release in exchange for or to induce the making of an interim or final payment in accordance with Section 85-7-419(2) or (3), and does so, if payment is made pursuant to the waiver and release and the design professional, contractor or subcontractor, without good cause, in turn willfully fails or refuses to pay the claimant the amount claimed as set forth in the waiver and release, then the design professional, contractor or subcontractor, as the case may be, shall be liable to the claimant in the amount of three (3) times the amount claimed on the face of the waiver and release. Good cause includes, but is not limited to, any defense available pursuant to the terms of the applicable contract, subcontract or purchase order.

(4) The provisions of this section do not apply to single-family residential construction.

SOURCES: Laws, 2014, ch. 487, § 4, eff from and after passage (approved Apr. 11, 2014.)

Editor's Note — Laws of 2014, ch. 487, § 25, provides:

“SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972.”

§ 85-7-409. Limitation of recovery of subcontractors against single-family residential homeowner.

(1) As to single-family residential construction only, payment made by or on behalf of the owner to a contractor or design professional in privity with the owner, for the work of a subcontractor, materialman, professional engineer or professional surveyor, shall be an absolute defense to any claim of lien made by the subcontractor, materialman, professional engineer or professional surveyor, (a) but only to the extent of the payment actually made by or on behalf of the owner to the contractor or design professional in privity with the owner, and (b) only to the extent the owner has not received a pre-lien notice in accordance with subsection (2) of this section before the payment.

(2) As to single-family residential construction only, as a condition precedent of any right to a special lien under Section 85-7-403 in favor of a subcontractor, materialman or design professional not in privity with the owner, the claimant must provide the owner a pre-lien written notice at least ten (10) days before filing a claim of lien under Section 85-7-405, which can be evidenced by any reliable means of delivery.

(3) The claimant's written notice required in subsection (2) shall be in substantially the same form as the Pre-Lien Notice set forth in Section 85-7-433(5).

SOURCES: Laws, 2014, ch. 487, § 5, eff from and after passage (approved Apr. 11, 2014.)

Editor's Note — Laws of 2014, ch. 487, § 25, provides:

“SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972.”

§ 85-7-411. Attachment of liens to buildings or improvements on leased property.

(1)(a) When the building or improvement is erected under or by virtue of any contract with a lessee in possession, and the erection thereof is not in violation of the terms or conditions of the lease, the lien shall attach to the building or improvement, and to the unexpired term of the lease, and the holder of the lien shall have the right to avoid a forfeiture of the lease by paying rent to the lessor, as it becomes due and payable, or by the performance of any other act or duty to which the lessee is bound.

(b) If the lien can be enforced by a sale of the building or improvement, the purchaser may, at his election, (i) become entitled to the possession of the demised premises, and to remain therein for the unexpired term, by paying rent to the lessor, or performing any other act or duty to which the lessee was bound, as if he were the assignee of the lease; or (ii) he may, within sixty (60) days after the sale, remove the building or improvement from the premises, but only to the extent that it is detachable from the real property without injury to the real property; and if he elects to take possession and to remain therein until the expiration of the term of the lease, he may, within a reasonable time after the expiration of the term, remove the building or improvement from the premises, but only to the extent that it is detachable from the real property without injury to the real property.

(c) If, before a sale, the holder of the lien has made any payments of rent, or other pecuniary compensation to the lessor, which ought to have been paid by the lessee, he shall be reimbursed for the payments from the proceeds of the sale.

(2) When a lien attaches under subsection (1) of this section, the lessor, at any time before a sale of the property, shall have a right to discharge the lien by paying to the holder the amount secured thereby, including costs and all monies he may have paid to the lessor to prevent a forfeiture of the lease, and, after a sale, he shall have the right to prevent the removal of the building or improvement from the premises by paying to the purchaser the value of the building or improvement; and upon the payment, either to the holder of the lien or to the purchaser, the building or improvement shall become the property of the lessor.

(3) Notwithstanding subsections (1) and (2) of this section, unless done by the written consent of the owner, only the building or improvements erected, and then only to the extent that they are detachable from the real property without injury to the real property, as well as the estate of the tenant in the land, shall be subject to the lien.

SOURCES: Laws, 2014, ch. 487, § 6, eff from and after passage (approved Apr. 11, 2014.)

Editor’s Note — Laws of 2014, ch. 487, § 25, provides:

“SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972.”

JUDICIAL DECISIONS

UNDER CURRENT LAW

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|-------------------------------------|-----------------------------------|
| 1.-10. [Reserved for future use.] | 14. Enforcement of lien. |
| 12. Liability generally. | |
| 13. Contracts by non-owning spouse. | 1.-10. [Reserved for future use.] |

UNDER FORMER LAW

12. Liability generally.

Statute subjecting to mechanic's lien only house, building, etc., erected, constructed, etc., at instance of one not owner of land, unless done by owner's written consent, was not invalid as depriving owner of property without due process. *Chears Floor & Screen Co. v. Gidden*, 159 Miss. 288, 131 So. 426 (1930).

A contractor had both an equitable and a statutory lien on a house that it built, even though, unbeknownst to the contractor, the promissory note and deed of trust granting it such liens had been executed by relatives of the true property owner, where the property owner had permitted and acquiesced in the construction of the house on his land and the occupancy thereof by his relatives, who had defaulted on the note. *Jim Walter Corp. & Mid-State Homes, Inc. v. Gates*, 370 So. 2d 928 (Miss. 1979).

Holders of vendor's lien, not being "owners" within statute limiting lien, unless alterations are made with owner's written consent, need not consent in writing to waive lien. *Azwell v. Mohamed*, 164 Miss. 80, 143 So. 863 (1932).

Building erected on lot by owners was subject to lien for materials furnished at instance and request of one of owners, though charged to third person's account; however, material furnished to person other than owner for partial construction of building will not support lien on building, although furnished with owner's knowledge and consent. *Stubbs v. Capital Paint & Glass Co.*, 160 Miss. 832, 131 So. 806 (1931), error overruled, 160 Miss. 845, 135 So. 495 (1931).

Structure alone erected by person not owner of land may be subject to mechanic's lien, if detachable from original building without injury to latter. *Maryland Cas. Co. v. Adams*, 159 Miss. 88, 131 So. 544 (1931).

Any fixture erected or installed by person not owner of land, as well as alterations and repairs on building made by one other than owner, may be subject of mechanic's lien, if detachable from building without injury; but materialman or laborer could not acquire lien on improve-

ment made by mere trespasser without any interest in property, possessory or otherwise. *Chears Floor & Screen Co. v. Gidden*, 159 Miss. 288, 131 So. 426 (1930).

Entire house, constructed by person not owner of land, may be subject to mechanic's lien, but not lot, unless work was done with owner's written consent. *Chears Floor & Screen Co. v. Gidden*, 159 Miss. 288, 131 So. 426 (1930).

13. Contracts by non-owning spouse.

Residence constructed by wife on lot owned by her was not subject to lien for materials furnished on husband's account, in view of circumstances under which materials were furnished. *Stubbs v. Capital Paint & Glass Co.*, 160 Miss. 832, 131 So. 806 (1931), error overruled, 160 Miss. 845, 135 So. 495 (1931).

Statute, if construed to create mechanic's lien on entire residence owned by wife for materials furnished husband on his own account in constructing additional room, would be unconstitutional as taking property without due process. *Chears Floor & Screen Co. v. Gidden*, 159 Miss. 288, 131 So. 426 (1930).

Wife's property was not liable for material used in erection of building on her land, purchased by husband without her consent. *Schiaffino v. Christ*, 96 Miss. 801, 51 So. 546 (1910).

Where a contract for plumbing on the separate property of the wife is made with the husband and on his credit, without the written consent of the wife, her property cannot be held liable. *O'Gwinn v. Winner*, 25 So. 354 (Miss. 1899).

14. Enforcement of lien.

A lumber contractor who made home improvements with the owners' knowledge and consent but without their written permission was entitled to a lien to cover the cost of improvements for which the price had not been paid only to the extent that the improvements could be removed without damaging the owners' interest in the house where an oral construction contract was negotiated with the daughter of the owners who, although she lived in the house and made payments to her parents equivalent to mortgage pay-

ments, was neither the beneficiary of a resulting trust in the house nor the vendee of an enforceable contract of sale, and thus, had no interest in the house to which the lien could attach. *Brown v. Gravlee Lumber Co.*, 341 So. 2d 907 (Miss. 1977).

Where the owner of a service station did not consent either expressly or impliedly to the erection of the awning at the service station, the seller could not enforce lien on the building or on the land. *Jay Indus. v. Powell*, 220 Miss. 372, 71 So. 2d 193 (1954).

Where the original lessee had assigned its leasehold interest to another, who in turn rented to a person who incurred a debt upon which a mechanic's lien was attempted to be enforced, the original lessee was not a necessary and indispensable party to the suit. *Jay Indus. v. Powell*, 220 Miss. 372, 71 So. 2d 193 (1954).

The owner of the leasehold interest upon which a mechanic's lien is sought to be enforced is a necessary party to the suit. *Jay Indus. v. Powell*, 220 Miss. 372, 71 So. 2d 193 (1954).

In an action against sublessee and owner of service station by seller of metal awning which was installed at the request of sublessee, the question of whether the awning could be detached and removed from the service station without impairment and damage to the premises, was for the jury. *Jay Indus. v. Powell*, 220 Miss. 372, 71 So. 2d 193 (1954).

Where husband contracted for erection of building on wife's land, materialman, to enforce his lien against building alone, must make wife and contractor parties. *Flake v. Central Hdwe. Co.*, 96 Miss. 838, 51 So. 461 (1910).

§ 85-7-413. Dissolution of special liens.

(1) The special lien specified in Section 85-7-403(1) shall be dissolved and unenforceable if the owner, purchaser from owner, or lender providing construction or purchase money or any other loan secured by real estate shows that:

(a) Payment or release of funds was made by the owner, purchaser or lender in reliance upon a lien waiver issued by the lien claimant pursuant to Section 85-7-419; or

(b) Payment or release of funds was made by the owner, purchaser or lender in reliance upon a sworn written statement of the contractor that the agreed price or reasonable value of the labor, services or materials has been paid or waived in writing by the lien claimant. If the sworn written statement, as required by the paragraph (b), is falsely and knowingly made, then all parties injured thereby shall have a right of action against the maker of the sworn written statement for damages in the amount of three (3) times their actual damages sustained on account of the willfully and falsely made sworn written statement.

(2) In a lien action, the owner of the improved real estate shall have a defense to the extent of any payment for the work, materials or services that are the subject of the lien made to a contractor or design professional in privity of contract with the owner or to a subcontractor in good-faith reliance upon receipt of a lien waiver pursuant to subsection (1)(a), or upon receipt of a sworn written statement pursuant to subsection (1)(b), and before receipt of notice of the filing by the lien claimant of a notice of lien pursuant to Section 85-7-405 or an affidavit of nonpayment pursuant to Section 85-7-419(5)(b).

SOURCES: Laws, 2014, ch. 487, § 7, eff from and after passage (approved Apr. 11, 2014.)

Editor's Note — Laws of 2014, ch. 487, § 25, provides:

“SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972.”

§ 85-7-415. Discharge of lien by filing bond.

(1) When any person entitled under this article to claim a lien against any real estate located in this state files a lien in the office of the clerk of the chancery court of the county in which the real estate is located, the owner of the real estate or the contractor or subcontractor employed to improve the property may, before or after foreclosure proceedings are instituted, discharge the lien upon the approval of a bond by the clerk of the chancery court. The bond shall be conditioned to pay to the holder of the lien the sum that may be found to be due the holder upon the trial of any payment action that may be filed by the lienholder to recover the amount of the claim within one hundred eighty (180) days from the time the claim of lien is filed or as otherwise required by Section 85-7-423. The bond shall be one hundred ten percent (110%) of the amount claimed under that lien and shall be either a cash bond or a bond with good security approved by the clerk of the chancery court and issued by any surety company authorized to do business in the State of Mississippi. Upon approval by the clerk of the bond, the real estate shall be discharged from the lien.

(2) Within seven (7) days of filing the bond required by subsection (1) of this section and any attachments, the party filing the bond shall send a notice of filing the bond and a copy of the bond by registered or certified mail or statutory overnight delivery to the lien claimant at the address stated on the lien or, if no address is shown for the lien claimant, to the person shown as having filed the lien on behalf of the claimant at the indicated address of the person and, if the bond is filed by a contractor or subcontractor, to the owner of the property and the contractor; however, if the lien claimant or the owner or contractor is an entity on file with the Secretary of State's office, sending the notice of filing the bond and a copy of the bond to the company's address or the registered agent's address on file with the Secretary of State shall be deemed sufficient; failure to send the notice of filing the bond and copy of the bond shall not invalidate the bond for purposes of discharge of a claim of lien under this section. With respect to bonds secured by property, the clerk shall not accept any real property bond unless the real property is scheduled in an attached affidavit setting forth a description of the property and indicating the record owner thereof, including any liens and encumbrances and amounts thereof, the market value, and the value of the sureties' interest therein, which affidavit shall be executed by the owner or owners of the interest; the bond and affidavit shall be recorded in the same manner and at the same cost as other deeds of real property. So long as the bond exists, it shall constitute a lien against the property described in the attached affidavit.

(3) The clerk of the chancery court shall have the right to rely upon the amount specified in the claim of lien in determining the sufficiency of any bond to discharge under this section. The failure to specify both the amount claimed due under the lien and the date the claim was due shall result in the lien not constituting notice for any purposes.

(4) The clerk of the chancery court shall be held harmless for good faith regarding any discretionary act in connection with approval of any bond provided for in this section.

SOURCES: Laws, 2014, ch. 487, § 8, eff from and after passage (approved Apr. 11, 2014.)

Editor's Note — Laws of 2014, ch. 487, § 25, provides:

“SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972.”

§ 85-7-417. Privileges and benefits of partnerships, corporations or associations with respect to special liens on real estate.

If services are performed or furnished with respect to any real estate by any design professional who is a member of a partnership or who is an agent or employee of a corporation or an association and the contract for the services is made for or on behalf of the owner with the partnership or corporation or association, the partnership, corporation or association shall be entitled to all the privileges and benefits of Section 85-7-403, just as if the partnership, corporation or association were a design professional.

SOURCES: Laws, 2014, ch. 487, § 9, eff from and after passage (approved Apr. 11, 2014.)

Editor's Note — Laws of 2014, ch. 487, § 25, provides:

“SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972.”

§ 85-7-419. Waiver and release of lien or bond claim.

(1) A right to claim a lien or to claim upon a bond may not be waived in advance of furnishing of labor, services or materials. Any purported waiver or release of lien, bond claim or this article executed or made in advance of furnishing labor, services or materials is null, void and unenforceable.

(2) When a claimant is requested to execute a waiver and release in exchange for or in order to induce payment other than final payment, the waiver and release shall substantially follow the Interim Waiver and Release upon Payment form set forth in Section 85-7-433(1). The failure to correctly complete any of the blank spaces in the referenced form does not invalidate the form if the subject matter of the release reasonably may be determined.

(3) When a claimant is requested to execute a waiver and release in exchange for or in order to induce making of final payment, the waiver and

release shall substantially follow the Waiver and Release upon Final Payment form set forth in Section 85-7-433(2). The failure to correctly complete any of the blank spaces in the referenced form does not invalidate the form if the subject matter of the release reasonably may be determined.

(4) Nothing contained in this section shall affect:

(a) The enforceability of any subordination of lien rights by a potential lien claimant to the rights of any other party which may have or acquire an interest in all or any part of the real estate or other property for which the potential lien claimant has furnished labor, services or material, even though the subordination is entered into in advance of furnishing labor, services or material, and even though the claimant has not actually received payment in full for its claim;

(b) The enforceability of any waiver of lien rights given in connection with the settlement of a bona fide dispute concerning the amount due the lien claimant for labor, services or material which have already been furnished; or

(c) The validity of a cancellation or release of a recorded claim of lien.

(5)(a) When a waiver and release provided for in this section is executed by the claimant, it shall be binding against the claimant for all purposes, subject only to payment in full of the amount set forth in the waiver and release.

(b) Amounts shall conclusively be deemed paid in full upon the earliest to occur of:

(i) Actual receipt of funds;

(ii) Execution by the claimant of a separate written acknowledgment of payment in full; or

(iii) Sixty (60) days after the date of the execution of the waiver and release, unless before the expiration of the sixty-day period the claimant files in the county in which the property is located an affidavit of nonpayment, using substantially the affidavit of nonpayment form set forth in Section 85-7-433(3), and sends a true and accurate copy of the affidavit of nonpayment to the owner of the property in the manner provided in Section 85-7-405 for sending a notice of a claim of lien to the owner.

(c) A claimant who is paid, in full, the amount set forth in the waiver and release form after filing an affidavit of nonpayment shall upon request execute in recordable form an affidavit swearing that payment in full has been received. Upon recordation thereof in the county in which the affidavit of nonpayment was recorded, the affidavit of nonpayment to which it relates shall be deemed void.

(d) Nothing in this section shall shorten the time within which to file a claim of lien.

(e) Except as provided in Section 85-7-413, a waiver and release provided in accordance with this section shall be suspended upon the filing of an affidavit of nonpayment until payment in full has been received. However, an affidavit of nonpayment shall not affect dissolution of the

claimant's lien or the availability or enforceability of any owner's defenses pursuant to Section 85-7-413, if applicable.

(f) The claimant may rely upon the information contained in the waiver and release form when completing for filing the affidavit of nonpayment.

SOURCES: Laws, 2014, ch. 487, § 10, eff from and after passage (approved Apr. 11, 2014.)

Editor's Note — Laws of 2014, ch. 487, § 25, provides:

"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-421. Expiration of claim of lien if payment action not timely filed; filing cancellation of fully satisfied lien.

(1) Failure of a lien claimant to commence a payment action to collect the amount of his or her claim within one hundred eighty (180) days from the date of filing the lien renders the claim of lien unenforceable. Any lien filed shall include on the face of the lien the following statement in at least 12 point bold font: "THIS CLAIM OF LIEN EXPIRES AND IS VOID ONE HUNDRED EIGHTY (180) DAYS FROM THE DATE OF FILING OF THE CLAIM OF LIEN IF A PAYMENT ACTION IS NOT FILED IN THAT TIME PERIOD." Failure to include the required language shall invalidate the lien and prevent it from being filed. No release or voiding of the liens shall be required. A lien shall expire sooner and be disregarded once it is determined that no notice of commencement was timely filed in response to a notice of contest pursuant to Section 85-7-423.

(2) Whenever any lien has been fully satisfied, the holder thereof shall file a cancellation of it in the record in the office of the chancery clerk.

(3) Any holder of a lien, who, after having been fully paid, fails for fifteen (15) days after demand in writing to file a cancellation as provided in subsection (1) of this section, shall be liable to any person thereby injured for the amount of the injury, which shall not be less than Five Hundred Dollars (\$500.00) per day that the required cancellation is not timely filed, plus reasonable attorney's fees and costs.

SOURCES: Laws, 2014, ch. 487, § 11, eff from and after passage (approved Apr. 11, 2014.)

Editor's Note — Laws of 2014, ch. 487, § 25, provides:

"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-423. Shortening the time prescribed in which to file payment action.

(1) An owner or an owner's agent or attorney, or the contractor or contractor's agent or attorney, may elect to shorten the time prescribed in which to commence a payment action to enforce any claim of lien by recording

in the chancery clerk's office a notice in substantially the form set forth in Section 85-7-433(4), along with proof of delivery to the lien claimant.

(2) The clerk of the chancery court shall cross-reference the notice of contest of lien to the lien. The owner or the owner's agent or attorney, or the contractor or the contractor's agent or attorney, shall send a copy of the notice of contest of lien by registered or certified mail or statutory overnight delivery to the lien claimant at the address noted on the face of the lien within seven (7) days of filing. Service shall be deemed complete upon mailing.

(3) The lien shall be extinguished by law upon the earlier of ninety (90) days after the filing of the notice of contest of lien, or one hundred eighty (180) days from the date of lien filing if no payment action is filed in that time period. No release or voiding of the liens shall be required. This subsection shall not be construed to extend the time in which a payment action must begin.

SOURCES: Laws, 2014, ch. 487, § 12, eff from and after passage (approved Apr. 11, 2014.)

Editor's Note — Laws of 2014, ch. 487, § 25, provides:

"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-425. Computation of time.

The computation of time under this article shall be determined pursuant to Section 1-3-67.

SOURCES: Laws, 2014, ch. 487, § 13, eff from and after passage (approved Apr. 11, 2014.)

Editor's Note — Laws of 2014, ch. 487, § 25, provides:

"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-427. Enforcement of judgments by special writ of execution.

(1) Judgments establishing the lien, and ordering the property sold for the satisfaction thereof, may be enforced by special writ of execution as set forth in Section 85-7-153.

(2) The delivery of possession by the person claiming the lien shall not affect his lien.

SOURCES: Laws, 2014, ch. 487, § 14, eff from and after passage (approved Apr. 11, 2014.)

Editor's Note — Laws of 2014, ch. 487, § 25, provides:

"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-429. Liability for falsely and knowingly filing claim of lien without just cause.

(1) Any person who shall falsely and knowingly file the claim of lien provided in this article without just cause shall be liable to every party injured thereby for a penalty equal to three (3) times the full amount for which the claim was filed, to be recovered in an action by any party so injured at any time within one hundred eighty (180) days from the filing of the claim of lien.

(2) Any person whose rights may be adversely affected by wrongful filing of a claim of lien, as provided by this article may, in addition to the remedies set forth in subsection (1) of this section, apply, upon seven (7) days' notice, to the circuit, county or chancery court, to expunge or vacate the claim of lien, in accordance with Rule 81(d) (2) of the Mississippi Rules of Civil Procedure.

SOURCES: Laws, 2014, ch. 487, § 15, eff from and after passage (approved Apr. 11, 2014.)

Editor's Note — Laws of 2014, ch. 487, § 25, provides:

"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-431. Payment bond as substitution for subcontractor or materialmen liens.

Where a contractor gives a payment bond providing payment protection to subcontractors and material suppliers to the full extent provided by the Mississippi Little Miller Act found at Section 31-5-51, the payment bond shall be in substitution for the liens provided for a subcontractor or materialman in this article. The contractor's right to a lien is not affected by the provision of a bond.

SOURCES: Laws, 2014, ch. 487, § 16, eff from and after passage (approved Apr. 11, 2014.)

Editor's Note — Laws of 2014, ch. 487, § 25, provides:

"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-433. Forms; interim waiver and release upon payment; waiver and release upon final payment; affidavit of nonpayment; notice of contest of lien; pre-lien notice to owner.

(1) The following form is the Interim Waiver and Release Upon Payment form referred to in Section 85-7-419:

INTERIM WAIVER AND RELEASE UPON PAYMENT
STATE OF MISSISSIPPI
COUNTY OF _____

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY _____ (NAME OF CONTRACTOR) TO FUR-

NISH _____ (DESCRIBE MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS _____ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF _____, COUNTY OF _____, AND IS OWNED BY _____ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

UPON THE RECEIPT OF THE SUM OF \$_____, THE MECHANIC AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND THROUGH THE DATE OF _____ (DATE) AND EXCEPTING THOSE RIGHTS AND LIENS THAT THE MECHANIC AND/OR MATERIALMAN MIGHT HAVE IN ANY RETAINED AMOUNTS, ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID BUILDING OR PREMISES.

SIGNATURE

BY: _____

(PRINT NAME)

ITS: _____

(PRINT TITLE)

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE _____ DAY OF _____, 20____.

NOTARY PUBLIC

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED THE PAYMENT, SIXTY (60) DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN BEFORE THE EXPIRATION OF THE SIXTY-DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER SECTION 85-7-419, MISSISSIPPI CODE OF 1972.

(2) The following form is the Waiver and Release Upon Final Payment form referred to in Section 85-7-419:

WAIVER AND RELEASE UPON FINAL PAYMENT

STATE OF MISSISSIPPI

COUNTY OF _____

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY _____ (NAME OF CONTRACTOR) TO FURNISH _____ (DESCRIBE MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS _____ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF _____, COUNTY OF _____, AND IS OWNED BY _____ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

UPON THE RECEIPT OF THE SUM OF \$_____, THE MECHANIC AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID PROPERTY.

SIGNATURE
BY: _____
(PRINT NAME)
ITS: _____
(PRINT TITLE)
SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE _____ DAY OF _____, 20____.

NOTARY PUBLIC
NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED THE PAYMENT, SIXTY (60) DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NON-PAYMENT OR A CLAIM OF LIEN BEFORE THE EXPIRATION OF THE SIXTY-DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER SECTION 85-7-419, MISSISSIPPI CODE OF 1972.

SIGNATURE
BY: _____
(PRINT NAME)
ITS: _____
(PRINT TITLE)
SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE _____ DAY OF _____, 20____.

NOTARY PUBLIC

(3) The following form is the Affidavit of Nonpayment referred to in Section 85-7-419:

AFFIDAVIT OF NONPAYMENT

STATE OF MISSISSIPPI

COUNTY OF _____

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY _____ (NAME OF CONTRACTOR) TO FURNISH _____ (DESCRIBE MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS _____ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF _____, COUNTY OF _____, AND IS OWNED BY _____ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

PURSUANT TO SECTION 85-7-419 THE UNDERSIGNED EXECUTED A LIEN WAIVER AND RELEASE WITH RESPECT TO THIS PROPERTY DATED _____, _____. THE AMOUNT SET FORTH IN THE WAIVER AND RELEASE (\$_____) HAS NOT BEEN PAID, AND THE UNDERSIGNED HEREBY GIVES NOTICE OF THE NONPAYMENT. THE ABOVE FACTS ARE SWORN TRUE AND CORRECT BY THE UNDERSIGNED.

SIGNATURE _____

BY: _____

(PRINT NAME)

ITS: _____

(PRINT TITLE)

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE _____ DAY OF _____, 20_____.

NOTARY PUBLIC

WITHIN TWO (2) DAYS OF FILING THIS AFFIDAVIT OF NONPAYMENT, THE FILING PARTY SHALL SEND A COPY OF THE AFFIDAVIT BY REGISTERED OR CERTIFIED MAIL OR STATUTORY OVERNIGHT DELIVERY TO THE OWNER OF THE PROPERTY. WHENEVER THE OWNER OF THE PROPERTY IS AN ENTITY ON FILE WITH THE SECRETARY OF STATE'S OFFICE, SENDING A COPY OF THE AFFIDAVIT TO THE COMPANY'S ADDRESS OR THE REGISTERED AGENT'S ADDRESS ON FILE WITH THE SECRETARY OF STATE SHALL BE DEEMED SUFFICIENT.

(4) The following form is the Notice of Contest of Lien form referred to in Section 85-7-423:

NOTICE OF CONTEST OF LIEN
STATE OF MISSISSIPPI
COUNTY OF _____

TO: [NAME AND ADDRESS OF LIEN CLAIMANT]

YOU ARE NOTIFIED THAT THE UNDERSIGNED CONTESTS THE CLAIM OF LIEN FILED BY YOU ON _____ 20_____, AND RECORDED IN _____ BOOK _____, PAGE _____ OF THE PUBLIC RECORDS OF _____ COUNTY, MISSISSIPPI, AGAINST PROPERTY OWNED BY _____, AND THAT THE TIME WITHIN WHICH YOU MAY COMMENCE A PAYMENT ACTION TO ENFORCE YOUR LIEN IS LIMITED TO SIXTY (60) DAYS FROM RECEIPT OF THIS NOTICE. THIS _____ DAY OF _____, 20_____.

THIS ABOVE-REFERENCED LIEN WILL EXPIRE AND BE VOID IF YOU DO NOT: (1) COMMENCE A PAYMENT ACTION FOR RECOVERY OF THE AMOUNT OF THE LIEN CLAIM PURSUANT TO SECTION 85-7-405, MISSISSIPPI CODE OF 1972, WITHIN SIXTY (60) DAYS FROM RECEIPT OF THIS NOTICE; AND (2) FILE A NOTICE OF COMMENCEMENT OF PAYMENT ACTION WITHIN THIRTY (30) DAYS OF FILING THE ABOVE-REFERENCED PAYMENT ACTION.

SIGNATURE

BY: _____

(PRINT NAME)

ITS: _____

(PRINT TITLE)

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE _____ DAY OF _____, 20_____.

NOTARY PUBLIC

(5) The following form is the Pre-Lien Notice form referred to in Section 85-7-409(3):

PRE-LIEN NOTICE TO OWNER

TO: [NAME AND ADDRESS OF OWNER]

TAKE NOTICE THAT THE UNDERSIGNED IS A PERSON HAVING A RIGHT TO A LIEN PURSUANT TO SECTION 85-7-403, MISSISSIPPI CODE OF 1972, WHO DOES NOT HAVE A DIRECT CONTRACT WITH THE OWNER, HAS PROVIDED LABOR, SERVICES OR MATERIALS FOR THE IMPROVEMENT OF PROPERTY COMMONLY KNOWN AS _____ ("THE PROPERTY"), FOR THE SUM OF \$ _____ FOR WHICH THE UNDERSIGNED HAS NOT BEEN PAID, AND INTENDS TO FILE A CLAIM OF SPECIAL LIEN ON THE SUBJECT PROPERTY IN TEN (10) OR MORE DAYS FROM THE DATE HEREOF.

SO NOTIFIED, THIS THE _____ DAY OF _____, 20_____.

LIEN CLAIMANT: _____

(PRINT NAME)

BY: _____

(SIGNATURE)

ITS: _____

(PRINT TITLE)

SOURCES: Laws, 2014, ch. 487, § 17, eff from and after passage (approved Apr. 11, 2014.)

Editor's Note — Laws of 2014, ch. 487, § 25, provides:

“SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972.”

ARTICLE 23.

COMMERCIAL REAL ESTATE BROKER LIEN ACT.

SEC.

- 85-7-501. Short title [Repealed effective July 1, 2017].
- 85-7-503. Definitions [Repealed effective July 1, 2017].
- 85-7-505. Commercial real estate lien [Repealed effective July 1, 2017].
- 85-7-507. When lien attaches to commercial real estate [Repealed effective July 1, 2017].
- 85-7-509. Lien notice, content [Repealed effective July 1, 2017].
- 85-7-511. Lien claimant to mail copy of notice of lien to owner(s) by certified mail [Repealed effective July 1 2017].
- 85-7-513. Enforcing lien [Repealed effective July 1, 2017].
- 85-7-515. Complaint; content; parties' foreclosure action; procedure [Repealed effective July 1, 2017].
- 85-7-517. When lien claim release or satisfaction to be filed; extinguishment on certain conditions [Repealed effective July 1, 2017].
- 85-7-519. Cost of proceeding to be paid by nonprevailing party [Repealed effective July 1, 2017].
- 85-7-521. Discharge of lien [Repealed effective July 1, 2017].
- 85-7-523. Remedy for lien wrongly filed [Repealed effective July 1, 2017].
- 85-7-525. Priority of deeds of trust or mortgages, tax liens and other liens [Repealed effective July 1, 2017].
- 85-7-527. Repeal of article.

§ 85-7-501. Short title [Repealed effective July 1, 2017].

This article shall be known and may be cited as the “Commercial Real Estate Broker Lien Act.”

SOURCES: Laws, 2014, ch. 522, § 1, eff from and after July 1, 2014.

Editor's Note — For repeal of this section, see § 85-7-527.

“Laws of 2014, ch. 522, § 15, provides:

“SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date.”

§ 85-7-503. Definitions [Repealed effective July 1, 2017].

As used in this article, the following terms have the following meanings:

(a) “Broker” means a real estate broker licensed pursuant to Section 73-35-3(1).

(b) “Broker services” means services for which a license issued by the Mississippi Real Estate Commission is required under Section 73-35-1 et seq.

(c) “Commercial real estate” means any real property or any and every interest or estate in land, including leaseholds, timeshares and condominiums, whether corporeal or incorporeal, freehold or nonfreehold, but excluding oil, gas or mineral leases and any other mineral leasehold, mineral estate or mineral interest of any nature whatsoever, which at the time the property or interest is made the subject of an agreement for broker services:

(i) Is lawfully used primarily for sales, office, research, institutional, warehouse, manufacturing, industrial or mining purposes involving five (5) or more dwelling units; or

(ii) May lawfully be used for any of the purposes listed in this paragraph (c) by a duly enacted zoning ordinance or which is the subject of an official application or petition to amend the applicable zoning ordinance to permit any of the uses listed in this paragraph (c) which is under consideration by the government agency with authority to approve the amendment; or

(iii) Is in good faith intended to be immediately used for any of the purposes listed in this paragraph (c) by the parties to any contract, lease, option or offer to make any contract, lease, or option.

(d) “Compensation” means any compensation that is due a broker for performance of broker services.

(e) “Lien claimant” means a broker claiming a lien under this article.

(f) “Owner” means the owner of record of any interest in commercial real estate.

SOURCES: Laws, 2014, ch. 522, § 2, eff from and after July 1, 2014.

Editor’s Note — For repeal of this section, see § 85-7-527.

“Laws of 2014, ch. 522, § 15, provides:

“SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner’s duly authorized agent on or after that date.”

§ 85-7-505. Commercial real estate lien [Repealed effective July 1, 2017].

(1) A broker shall have a lien upon commercial real estate in the amount that the broker is due under a written agreement for broker services signed by the owner or signed by the owner’s duly authorized agent, if:

(a) The broker has performed under the provisions of the agreement;

(b) The written agreement for broker services clearly sets forth the broker’s duties to the owner; and

(c) The written agreement for broker services sets forth the conditions upon which the compensation shall be earned and the amount of the compensation.

(2) The lien under this section shall be available only to the broker named in the instrument signed by the owner or the owner's duly authorized agent.

(3) A broker's lien is not valid or enforceable against a grantee or purchaser of an interest in the commercial real estate conveyed by the person owing the compensation if the grantee or purchaser is taking the property without existing tenants or leases covered by a written agreement for broker services if the deed or instrument transferring the interest is recorded before the broker's notice of lien is recorded.

SOURCES: Laws, 2014, ch. 522, § 3, eff from and after July 1, 2014.

Editor's Note — For repeal of this section, see § 85-7-527.

"Laws of 2014, ch. 522, § 15, provides:

"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."

§ 85-7-507. When lien attaches to commercial real estate [Repealed effective July 1, 2017].

A lien authorized by this article attaches to the commercial real estate only when the lien claimant files a timely notice of the lien in the office of the chancery clerk in the county in which the commercial real estate is located. A notice of lien is timely if it is filed after the claimant's performance under the written agreement for broker services and before the conveyance or transfer of the commercial real estate that is the subject of the lien, except in cases where payments of compensation are due in installments or upon renewal. When payment of compensation to a broker is due in installments or upon renewal under the written agreement for broker services, a portion of which is due or may become due after the conveyance or transfer of the commercial real estate, a single claim for a lien filed before transfer or conveyance of the commercial real estate claiming all compensation due in installments or upon renewal shall be valid and enforceable for a period of one (1) year from the date of filing as it pertains to payments due after the transfer or conveyance; however, as payments or partial payments of compensation are received, the broker shall provide partial releases for those payments, thereby reducing the amount due the broker under the broker's lien. The notice of single claim for a lien may be renewed for a period of one (1) year by the filing of a renewal notice meeting the requirements of this act before the expiration of the expiring notice, and may be likewise renewed from year to year so long as installments of compensation or renewal compensation are due. Notwithstanding any notice of single claim for a lien filed, when payment of compensation to a broker is due in installments or contingent upon renewals under the written agreement for broker services, a portion of which is or would be due after the conveyance or transfer of the commercial real estate, any notice of lien for those payments

due or becoming due after the transfer or conveyance may be recorded after the transfer or conveyance of the commercial real estate and within ninety (90) days of the date on which the payment is due; in that case the lien shall be effective as a lien against the transferee's interest in the commercial real estate as of the date filed and, in the case of a lease or transfer of a nonfreehold interest, the lien shall be effective as a lien against the owner's interest in the commercial real estate as of the date filed.

SOURCES: Laws, 2014, ch. 522, § 4, eff from and after July 1, 2014.

Editor's Note — For repeal of this section, see § 85-7-527.

"Laws of 2014, ch. 522, § 15, provides:

"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."

§ 85-7-509. Lien notice, content [Repealed effective July 1, 2017].

(1) A lien notice under this article shall be signed by the lien claimant and shall contain an attestation by the lien claimant that the information contained in the notice is true and accurate to the best of the lien claimant's knowledge and belief.

(2) The lien notice shall include all of the following information:

(a) The name of the lien claimant;

(b) The name of the owner;

(c) A description of the commercial real estate upon which the lien is being claimed;

(d) The amount for which the lien is claimed and whether the amount is due in installments; and

(e) The claimant's grounds for the lien, including a reference to the written agreement for broker services that is the basis for the lien. It is not necessary that the written agreement for broker services be attached to the notice.

(3) The chancery clerk shall index properly filed liens in the "Notice of Construction Liens" record maintained in his office as provided under Section 85-7-133.

SOURCES: Laws, 2014, ch. 522, § 5, eff from and after July 1, 2014.

Editor's Note — For repeal of this section, see § 85-7-527.

"Laws of 2014, ch. 522, § 15, provides:

"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."

§ 85-7-511. Lien claimant to mail copy of notice of lien to owner(s) by certified mail [Repealed effective July 1 2017].

Any lien claimant who files a lien on commercial real estate under the provisions of this article shall mail a copy of the notice of the lien to the owner(s) of the commercial real estate by certified mail, return receipt requested, or shall serve a copy of the notice of the lien in accordance with any of the provisions for service of process set forth in the Mississippi Rules of Civil Procedure, as amended from time to time. The lien claimant shall file proof of service with the chancery clerk. The lien is void if the lien claimant does not file and serve the lien as provided in this section.

SOURCES: Laws, 2014, ch. 522, § 6, eff from and after July 1, 2014.

Editor's Note — For repeal of this section, see § 85-7-527.

“Laws of 2014, ch. 522, § 15, provides:

“SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date.”

§ 85-7-513. Enforcing lien [Repealed effective July 1, 2017].

A lien claimant may bring suit to enforce a lien that attaches under the provisions of this article in any court of competent jurisdiction in the county where the commercial real estate is located. The lien claimant shall begin proceedings within one (1) year after filing the notice of lien, and failure to begin proceedings within the one (1) year shall extinguish the lien. If a claim is based upon an option to acquire an interest in commercial real estate, the lien claimant shall begin proceedings within one (1) year of the option to purchase being exercised. A claim for the same lien extinguished under this section may not be asserted in any later proceeding. A lender shall not be made a party to any suit to enforce a lien under this article unless the lender has willfully caused the nonpayment of the compensation giving rise to the lien.

SOURCES: Laws, 2014, ch. 522, § 7, eff from and after July 1, 2014.

Editor's Note — For repeal of this section, see § 85-7-527.

“Laws of 2014, ch. 522, § 15, provides:

“SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date.”

§ 85-7-515. Complaint; content; parties' foreclosure action; procedure [Repealed effective July 1, 2017].

(1) A complaint filed under the provisions of this article shall contain all of the following:

(a) A statement of the terms of the written agreement for broker services on which the lien is based or a copy of the written contract or agreement;

(b) The date when the written agreement for broker services was made;

(c) A description of the services performed;

(d) The amount due and unpaid;

(e) A description of the property that is subject to the lien; and

(f) Any other facts necessary for a full understanding of the rights of the parties.

(2) The plaintiff shall file the action against all parties that have an interest of record in the commercial real estate; provided that a lender shall not be made a party to any suit to enforce a lien under this article unless the lender has willfully caused the nonpayment of the compensation giving rise to the lien. A foreclosure action for a lien claimed under this article shall be brought under the provisions of this section.

(3) Upon filing a complaint, the plaintiff shall file with the chancery clerk of each county where the commercial real estate, or any part thereof, is situated a lis pendens notice in accordance with Section 11-47-3.

SOURCES: Laws, 2014, ch. 522, § 8, eff from and after July 1, 2014.

Editor's Note — For repeal of this section, see § 85-7-527.

“Laws of 2014, ch. 522, § 15, provides:

“SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date.”

§ 85-7-517. When lien claim release or satisfaction to be filed; extinguishment on certain conditions [Repealed effective July 1, 2017].

If a notice of lien has been filed with the chancery clerk and the claim has been paid in full or in part, or if a condition occurs that would preclude the lien claimant from receiving compensation, in whole or in part, under the terms of the written agreement for broker services on which the lien is based, the lien claimant shall promptly, and in no event more than thirty (30) days after a properly served written demand of the owner, lienor, or other authorized agent, file with the chancery clerk and serve upon the owner(s) of record a written release, partial release or satisfaction of the lien. If a lien claimant fails to file a suit to enforce the lien within the time prescribed by this article or fails to file an answer in a pending suit to enforce a lien within thirty (30) days after a properly served written demand of the owner, lienor, or other authorized agent, the lien shall be extinguished. Service of the demand shall be by registered or certified mail, return receipt requested, or by personal service under the Mississippi Rules of Civil Procedure, as amended from time to time. The claimant shall promptly file proof of properly served written demand with the chancery clerk. The provisions of this section shall not extend to any other

deadline provided by law for the filing of any pleadings or for the foreclosure of any lien governed by this article.

SOURCES: Laws, 2014, ch. 522, § 9, eff from and after July 1, 2014.

Editor's Note — For repeal of this section, see § 85-7-527.

"Laws of 2014, ch. 522, § 15, provides:

"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."

§ 85-7-519. Cost of proceeding to be paid by nonprevailing party [Repealed effective July 1, 2017].

The costs of any proceeding brought to enforce a lien filed under this article, including reasonable attorneys' fees and prejudgment interest due to the prevailing party, shall be paid by the nonprevailing party or parties. If more than one (1) party is responsible for costs, fees and prejudgment interest, the costs, fees and prejudgment interest shall be equitably apportioned by the court among the responsible parties.

SOURCES: Laws, 2014, ch. 522, § 10, eff from and after July 1, 2014.

Editor's Note — For repeal of this section, see § 85-7-527.

"Laws of 2014, ch. 522, § 15, provides:

"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."

§ 85-7-521. Discharge of lien [Repealed effective July 1, 2017].

Unless an alternative procedure is available and is acceptable to the transferee in a real estate transaction, any claim of lien on commercial real estate filed under this article may be discharged by any of the following methods:

(a) The lien claimant of record, the claimant's lawful agent, or the claimant's duly authorized attorney-in-fact, in the presence of the chancery clerk or a notary public, may acknowledge in writing the satisfaction of the claim of lien on the commercial real estate indebtedness and file the same with the chancery clerk, after which the chancery clerk shall enter on the record of the claim of lien on the commercial real estate the acknowledgment of satisfaction.

(b) The owner may exhibit an instrument of satisfaction signed and acknowledged by the lien claimant of record in the presence of the chancery clerk or a notary public, which instrument states that the claim of lien on the commercial real estate indebtedness has been paid or satisfied, after which the chancery clerk shall cancel the claim of lien on the commercial real estate by entry of satisfaction on the record of the claim of lien on the commercial real estate.

(c) By failure to enforce the claim of lien on the commercial real estate within the time prescribed by this article.

(d) By filing in the office of the chancery clerk the original or attested copy of a judgment or decree of a court of competent jurisdiction showing that the action by the claimant to enforce the claim of lien on the commercial real estate has been dismissed or finally determined adversely to the claimant.

(e) Whenever funds in an amount equal to one hundred twenty-five percent (125%) of the amount of the claim of lien on the commercial real estate are deposited with the chancery clerk to be applied to any payment finally determined to be due, after which the chancery clerk shall cancel the claim of lien on the commercial real estate. Thereafter, the lien of the claimant shall remain in place and be fully enforceable as to the funds deposited with the chancery clerk, but the lien upon the commercial real property shall be deemed released.

(f) Whenever a corporate surety bond, in an amount equal to one hundred twenty-five percent (125%) of the amount of the claim of lien on the commercial real estate and conditioned upon the payment of the amount finally determined to be due in satisfaction of the claim of lien on the commercial real estate is deposited with the chancery clerk, after which the chancery clerk shall cancel the claim of lien on the commercial real estate. Thereafter, the lien of the claimant shall remain in place and be fully enforceable as to the funds deposited with the chancery clerk, but the lien upon the commercial real property shall be deemed released.

(g) By failure to file a written release or satisfaction of a lien when required by this article or to timely file or take other action required by this article.

SOURCES: Laws, 2014, ch. 522, § 11, eff from and after July 1, 2014.

Editor's Note — For repeal of this section, see § 85-7-527.

“Laws of 2014, ch. 522, § 15, provides:

“SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date.”

§ 85-7-523. Remedy for lien wrongly filed [Repealed effective July 1, 2017].

Any broker who falsely and maliciously files or causes to be filed a notice of lien under this article that brings in question or disparages the title to property may be held liable in a civil action for damages, in which case damages shall be recoverable up to two (2) times the amount of monetary damages caused by the broker's false and malicious acts, in addition to any other damages.

SOURCES: Laws, 2014, ch. 522, § 12, eff from and after July 1, 2014.

Editor's Note — For repeal of this section, see § 85-7-527.

"Laws of 2014, ch. 522, § 15, provides:

"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."

§ 85-7-525. Priority of deeds of trust or mortgages, tax liens and other liens [Repealed effective July 1, 2017].

All deeds of trust or mortgages, all purchase money mortgages and all liens for ad valorem taxes, regardless of when recorded, and all other liens afforded priority by law or recorded before the recording of the broker's lien provided by this article shall have priority over the broker's lien.

SOURCES: Laws, 2014, ch. 522, § 13, eff from and after July 1, 2014.

Editor's Note — For repeal of this section, see § 85-7-527.

"Laws of 2014, ch. 522, § 15, provides:

"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."

§ 85-7-527. Repeal of article.

This article shall stand repealed on July 1, 2017.

SOURCES: Laws, 2014, ch. 522, § 14, eff from and after July 1, 2014.

CHAPTER 11

Mississippi Uniform State Tax Lien Registration Act

SEC.

- 85-11-1. Short title [Effective January 1, 2015].
- 85-11-3. Purpose and scope of chapter [Effective January 1, 2015].
- 85-11-5. Definitions [Effective January 1, 2015].
- 85-11-7. Notice of tax lien; enrollment in tax lien registry [Effective January 1, 2015].
- 85-11-9. Perfection of tax lien; tax lien as authority for issuance of writs and warrants [Effective January 1, 2015].
- 85-11-11. Payments to circuit clerks for service provided to citizens for researching and providing lien information [Effective January 1, 2015].
- 85-11-13. Effect of notice of tax lien; duration of lien; reenrollment of tax lien [Effective January 1, 2015].
- 85-11-15. Cancellation of notice of tax lien upon discovery of administrative issue [Effective January 1, 2015].
- 85-11-17. Release of tax lien; enrollment of new tax lien under certain circumstances [Effective January 1, 2015].
- 85-11-19. Tax lien registry; information to be included; certification of records on the tax lien registry; sale of bulk information appearing on tax lien registry; limitation on uses of tax lien registry information [Effective January 1, 2015].
- 85-11-21. Enrollment on tax lien registry of certain unsatisfied tax liens appearing on county judgment rolls [Effective January 1, 2015].

85-11-23. Rules and regulations [Effective January 1, 2015].

§ 85-11-1. Short title [Effective January 1, 2015].

This chapter may be cited as the Mississippi Uniform State Tax Lien Registration Act.

SOURCES: Laws, 2014, ch. 412, § 1, eff from and after Jan. 1, 2015.

§ 85-11-3. Purpose and scope of chapter [Effective January 1, 2015].

(1) The purpose of this chapter is to provide a uniform statewide system for filing notices of tax liens to be maintained by the Department of Revenue that are in favor of or enforced by the Mississippi Department of Revenue.

(2) The scope of this chapter is limited to tax liens in real property and personal property, tangible and intangible, of taxpayers or other persons against whom the Mississippi Department of Revenue has liens pursuant to law for unpaid finally determined tax liabilities administered by the Mississippi Department of Revenue.

SOURCES: Laws, 2014, ch. 412, § 2, eff from and after Jan. 1, 2015.

§ 85-11-5. Definitions [Effective January 1, 2015].

As used in this chapter:

(a) “Commissioner” means the Commissioner of Revenue of the Mississippi Department of Revenue.

(b) “Debtor” and “judgment debtor” means a taxpayer or other person against whom there is an unpaid finally determined tax liability collectible by the Mississippi Department of Revenue.

(c) “Department” means the Mississippi Department of Revenue.

(d) “Finally determined tax liabilities” means any state tax, fee, penalty, and/or interest owed by a person to the Mississippi Department of Revenue where the assessment of the liability is not subject to any further timely filed administrative or judicial review.

(e) “Last-known address of the debtor” means the address of the debtor appearing on the records of the department at the time the notice of tax lien is enrolled in the Uniform State Tax Lien Registry.

(f) “Person” means an individual, organization or legal entity.

(g) “Uniform State Tax Lien Registry” or “Tax Lien Registry” means the public database maintained by the department wherein tax liens enrolled in favor of and enforced by the department are filed.

SOURCES: Laws, 2014, ch. 412, § 3, eff from and after Jan. 1, 2015.

§ 85-11-7. Notice of tax lien; enrollment in tax lien registry [Effective January 1, 2015].

(1) If any person refuses to pay any finally determined tax liabilities, the commissioner may enroll in the tax lien registry a notice of tax lien for the finally determined tax liabilities due.

(2) The notice of tax lien file shall include:

- (a) The name and last-known address of the debtor;
- (b) The name and address of the department;
- (c) The tax lien number assigned to the lien by the department; and
- (d) The basis for the tax lien, including, but not limited to, the amount owed as of the date of enrollment in the tax lien registry.

SOURCES: Laws, 2014, ch. 412, § 4, eff from and after Jan. 1, 2015.

§ 85-11-9. Perfection of tax lien; tax lien as authority for issuance of writs and warrants [Effective January 1, 2015].

(1) When a notice of tax lien is enrolled by the department in the tax lien registry, the tax lien is perfected and shall be attached to all of the existing and after-acquired property of the debtor, both real and personal, tangible and intangible, which is located in any and all counties within the State of Mississippi.

(2) The perfected tax lien shall be valid as against mortgagees, pledgees, entrusters, purchasers, judgment creditors, and other persons from the time of enrollment in the tax lien registry.

(3) The amount of the tax lien shall be a debt due the State of Mississippi and shall remain a lien upon all property and rights to property belonging to the debtor, both real and personal, tangible and intangible, which is located in any and all counties within the State of Mississippi, including choses in action, with the same force and like effect as any enrolled judgment of a court of record. Interest and penalty shall accrue on the tax lien at the same rate and with the same restrictions, if any, as specified by statute for the accrual of interest and penalty for the type of tax or taxes for which the tax lien was issued.

(4) The notice of tax lien shall serve as authority for issuance of writs of execution, writs of attachment, writs of garnishment, or other remedial writs. In addition to those writs, the notice of tax lien shall also serve as authority for the commissioner to issue warrants under Sections 27-7-57, 27-13-31 and 27-65-59 for the collection of the tax lien. The tax lien enrolled in the tax lien registry shall constitute the judgment enrolled for the payment of the amount of tax, penalties, and interest referred to in Sections 27-7-57, 27-13-31 and 27-65-59, but the warrant issued for a tax lien enrolled on a tax lien registry shall direct and authorize the special agent to seize and sell the real and personal property found anywhere within this state that belongs to the taxpayer against whom the tax lien was enrolled and not just property in a specific county. Once issued, the execution of the warrants shall be in

accordance with Section 27-3-33(4) for the levy on salaries, compensation or other monies due the delinquent taxpayer; Sections 27-7-61 through 27-7-67 in regard to income tax and withholding tax; Sections 27-13-35 through 27-13-41 for franchise tax; and Sections 27-65-63 through 27-65-69 for sales tax and any other tax or fee administered by the department that utilizes the administrative provisions of the sales tax law in the administration of the tax or fee. Under warrants issued for the tax liens enrolled in the tax lien registry, any property, real or personal, within the State of Mississippi is subject to levy under Section 27-3-33(4) if the person that owes the salary, compensation or other monies to the debtor is subject to service of process in this state.

SOURCES: Laws, 2014, ch. 412, § 5, eff from and after Jan. 1, 2015.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (2) by substituting “pledgees” for “pledges.” The Joint Committee ratified the correction at its July 24, 2014, meeting.

§ 85-11-11. Payments to circuit clerks for service provided to citizens for researching and providing lien information [Effective January 1, 2015].

Beginning with calendar year 2015 and each year thereafter, on January 15 and July 15 of each year, the department shall pay to the Mississippi circuit clerks an amount equal to half of the yearly average amount paid for the three (3) fiscal year periods ending June 30, 2011, 2012 and 2013, to each county for the enrollment, reenrollment, and/or release of the tax liens under this chapter. The payment shall be used for the service provided to citizens that request assistance from circuit clerks for researching and providing lien information, whether such information is on the lien registry or included in historical documents. The clerks shall report the number of citizens assisted to the department on or before June 30 of each year. The commissioner is authorized to pay the clerks out of funds appropriated by the Legislature to defray expenses of the department.

SOURCES: Laws, 2014, ch. 412, § 6, eff from and after Jan. 1, 2015.

§ 85-11-13. Effect of notice of tax lien; duration of lien; reenrollment of tax lien [Effective January 1, 2015].

(1) A notice of tax lien shall be a lien upon the debtor’s property located anywhere in the state for a period of seven (7) years from the date of enrollment unless:

- (a) It is sooner released by the department; or
- (b) The department reenrolls the notice of tax lien before the expiration of the seven (7) years. There shall be no limit upon the number of times that the department may reenroll notices of tax liens.

(2) In the event that a notice of tax lien lapses on the expiration of seven (7) years, the notice of tax lien may, at any time thereafter and in the sole discretion of the department, be reenrolled. A notice of tax lien that is reenrolled pursuant to this subsection shall be fully enforceable as of the date of reenrollment; however, any notice of tax lien that is reenrolled after the lapse of the seven-year period shall lose the priority it had prior to its expiration. There shall be no limit upon the number of times that the department may reenroll notices of tax liens in this manner.

(3) If the department reenrolls a notice of tax lien, the notice of tax lien in regard to that reenrollment shall contain the following information:

- (a) The name and last-known address of the debtor;
- (b) The name and address of the department;
- (c) An indication that the notice of tax lien is for a previously enrolled lien;
- (d) The tax lien number assigned to the lien by the department; and
- (e) The basis for the tax lien, including, but not limited to, the amount owed as of the date of reenrollment in the tax lien registry.

(4) The reenrollment of a tax lien in the tax lien registry within the seven-year period shall constitute a continuation of the tax lien appearing on the judgment roll of the county as it relates to real and personal property belonging to the debtor in that county; however, the reenrolled tax lien shall attach to all property and all rights to property belonging to the debtor, both real and personal, tangible and intangible, located in any and all counties within the state as of the date of the reenrollment in the tax lien registry. A notice of release of tax lien filed in the tax lien registry shall constitute a release of tax lien within the department, the tax lien registry, and/or the county in which the tax lien was previously enrolled. The information contained on the tax lien registry shall be controlling, and any inconsistencies found between the tax lien registry and the judgment roll of any county shall be superseded by the tax lien registry.

SOURCES: Laws, 2014, ch. 412, § 7, eff from and after Jan. 1, 2015.

§ 85-11-15. Cancellation of notice of tax lien upon discovery of administrative issue [Effective January 1, 2015].

Within two (2) working days from the date the department discovers an administrative issue in the filing of a notice of tax lien in the tax lien registry, it may cancel a notice of tax lien from the tax lien registry and file a notice of release of the tax lien due to administrative correction. The notice of tax lien shall be treated as though never enrolled.

SOURCES: Laws, 2014, ch. 412, § 8, eff from and after Jan. 1, 2015.

§ 85-11-17. Release of tax lien; enrollment of new tax lien under certain circumstances [Effective January 1, 2015].

(1) Within fifteen (15) working days from the receipt by the department of full payment of a tax lien enrolled in the tax lien registry, including payment of any additionally accruing interest, penalty, fees and/or costs, the department shall file in the tax lien registry a notice of release of the tax lien being paid.

(2) In the event that a notice or release of tax lien is issued in error by the department and enrolled in the tax lien registry; or the form of payment received by the department is not honored and/or the transfer of payment to the department is not completed for any reason after the notice of release of tax lien is enrolled in the tax lien registry; or the department is required to return and/or turn over the payment received to the taxpayer or other person due to bankruptcy, a court order, or other proceedings after the notice of release of the tax lien issued is enrolled in the tax lien registry; the department, in its sole discretion, may enroll a new tax lien for the finally determined tax liabilities represented in the tax lien for which the tax lien was issued, including any additional accruing interest, penalty and/or fees to the date of the new enrollment. A notice of tax lien that is enrolled pursuant to this provision shall be fully enforceable as of the date of the new enrollment.

SOURCES: Laws, 2014, ch. 412, § 9, eff from and after Jan. 1, 2015.

§ 85-11-19. Tax lien registry; information to be included; certification of records on the tax lien registry; sale of bulk information appearing on tax lien registry; limitation on uses of tax lien registry information [Effective January 1, 2015].

(1) The department shall maintain notices of tax liens filed in the tax lien registry after January 1, 2015 in its information management system in a form that permits them to be readily accessible in an electronic form through the Internet and to be reduced to printed form. The electronic and printed form shall include the following information:

- (a) The name of the taxpayer as judgment debtor;
- (b) The name and address of the department;
- (c) The tax lien number assigned to the lien by the department;
- (d) Whether the enrollment is the first enrollment of the tax lien or a reenrollment of the tax lien;
- (e) The amount of the taxes, penalties, interest, and fees indicated due on the notice of tax lien received from the department; and
- (f) The date and time of enrollment or reenrollment.

(2) The department shall not charge for the access to information on the enrollment of tax liens by name of judgment debtor or by tax lien number. The department is, however, authorized to charge for the certification of any record or lack of records appearing on the tax lien registry. The department shall

determine the process by which such tax lien registry certification can be requested, including a charge for such certification that shall cover at least the cost of providing the certification. The payment of the charge for a tax lien registry certification shall be retained by the department as reimbursement of its cost to provide the certification.

(3) The department is authorized to sell at bulk the information appearing on the tax lien registry. In selling the information, the department shall determine the process by which the information will be sold and the media or method by which it will be available to the purchaser and shall set a price for the information that will at least cover the cost of producing the information. The proceeds from the sale of bulk information shall be retained by the department and used to cover its cost to produce the information sold and to maintain the tax lien registry.

(4) Tax lien registry information, whether accessed by name of judgment debtor or by tax lien number at no charge, through a bulk sale of information or by other means, will not be used for a survey, marketing or solicitation purposes. Survey, marketing or solicitation purpose shall not include any action by the department or its authorized agent to collect a debt represented by a tax lien appearing in the tax lien registry. The department or the Attorney General is hereby authorized to bring an action to enjoin the unlawful use of tax lien registry information for a survey, marketing or solicitation purpose and to recover the cost of such action, including reasonable attorney's fees.

SOURCES: Laws, 2014, ch. 412, § 10, eff from and after Jan. 1, 2015.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (4) by substituting “whether accessed” for “whether access.” The Joint Committee ratified the correction at its July 24, 2014, meeting.

§ 85-11-21. Enrollment on tax lien registry of certain unsatisfied tax liens appearing on county judgment rolls [Effective January 1, 2015].

All tax liens currently enrolled appearing on the judgment rolls of the counties of this state as of January 1, 2015 and which the department does not show as satisfied or as issued in error and which were last enrolled or reenrolled on the judgment rolls within seven (7) years before January 1, 2015 shall be immediately enrolled on the tax lien registry on January 1, 2015, and shall have the force and effect of a judgment on all real and personal property belonging to the debtor anywhere in the state for a duration of seven (7) years effective from the date of the enrollment on the tax lien registry unless and until such time as either the notice of tax lien is released or the department reenrolls the tax lien in the tax lien registry.

SOURCES: Laws, 2014, ch. 412, § 11, eff from and after Jan. 1, 2015.

§ 85-11-23. Rules and regulations [Effective January 1, 2015].

The department shall have the authority to promulgate rules and regulations, not inconsistent with this chapter, as it may deem necessary to enforce its provisions.

SOURCES: Laws, 2014, ch. 412, § 12, eff from and after Jan. 1, 2015.

TITLE 87

CONTRACTS AND CONTRACTUAL RELATIONS

Chapter 7.	Improvements to Real Property	87-7-1
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CHAPTER 7

Improvements to Real Property

SEC.	
87-7-7.	Contractor negotiation of draft payable to contractor and other parties; written signed authorization of co-payees required; penalties.

§ 87-7-3. Payment of contractors; penalty for late payment.

JUDICIAL DECISIONS

2. Prejudgment interest not available.
4. Liquidated damages requirement.

2. Prejudgment interest not available.

Award of prejudgment interest under Miss. Code Ann. § 75-17-1 in a contractor's claim was error because the principal amount was not fixed before judgment and was unliquidated; the amount of claim was clearly in dispute, there was no finding that the owners disputed the amount owed in bad faith, and the trial court resorted to quantum meruit to fix the exact amount of damages. The same considerations which precluded a recovery of prejudgment interest for unliquidated

amounts owed under § 75-17-1 applied to Miss. Code Ann. § 87-7-3. *Falkner v. Stubbs*, — So. 3d —, 2013 Miss. LEXIS 65 (Miss. Mar. 7, 2013), opinion withdrawn by, remanded by 2013 Miss. LEXIS 431 (Miss. Aug. 22, 2013).

4. Liquidated damages requirement.

Where appellee's recovery was based on an oral contract, he was not entitled to prejudgment interest because there was a bona fide dispute as to the amount of damages, and prejudgment interest was unavailable under Miss. Code Ann. §§ 75-17-1 or 87-7-3 where the damages were unliquidated. *Falkner v. Stubbs*, 121 So. 3d 899 (Miss. 2013).

§ 87-7-7. Contractor negotiation of draft payable to contractor and other parties; written signed authorization of co-payees required; penalties.

(1) A contractor who undertakes to negotiate a draft made payable to the contractor and any other party must first obtain an endorsement or other written signed authorization of every co-payee on the draft if the draft is tendered in payment for materials or equipment furnished or labor performed by the owner, laborer, supplier or equipment dealer.

(2) A contractor who negotiates a draft without first obtaining an endorsement or other written signed authorization required under this section is guilty of a misdemeanor and shall be subject to a fine not to exceed Five Hundred Dollars (\$500.00) per violation, and shall also be ordered by the court to make full restitution to the owner, laborer, supplier or equipment dealer who

is entitled to payment from the proceeds of the draft, as well as reasonable attorney's fees incurred by any party to whom restitution is ordered.

SOURCES: Laws, 2012, ch. 506, § 1, eff from and after July 1, 2012.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

TITLE 89

REAL AND PERSONAL PROPERTY

Chapter 5.	Recording of Instruments	89-5-1
Chapter 12.	Uniform Disposition of Unclaimed Property Act	89-12-1

CHAPTER 1

Land and Conveyances

IN GENERAL

§ 89-1-7. Estate in two or more persons.

JUDICIAL DECISIONS

3. Joint tenancy.
4. Tenancy by entirety.

3. Joint tenancy.

Award of the entire purchase price of a home to one of the unmarried joint tenants (JT1) was appropriate. Joint tenants were allowed to seek partition of a property under Miss. Code Ann. § 11-21-3 partition, the chancellor could adjust the equities and determine the claims of the joint tenants under Miss. Code Ann. § 11-21-9, and JT1 had paid the entire purchase price for the home along with the cost of all utilities, insurance, club dues, and taxes while JT2 had paid nothing. *Jones v. Graphia*, 95 So. 3d 751 (Miss. Ct. App. 2012).

4. Tenancy by entirety.

Chapter 13 debtor who owned real property with her husband as a tenant by the entireties, which she claimed as her homestead, was allowed under 11 U.S.C.S. § 522(b)(3)(B) to exempt the full value of the property from unsecured creditors' claims for debts she incurred separately, when her husband did not join her in filing bankruptcy. Mississippi was a common law state, the common law of Mississippi constituted "applicable nonbankruptcy law" under § 522(b)(3)(B), and her homestead was exempt under Mississippi law from any process which could arise from the claims at issue. In re Dixon, — Bankr. —, 2011 Bankr. LEXIS 5680 (Bankr. S.D. Miss. Mar. 31, 2011).

§ 89-1-55. How lands sold under mortgages and deeds in trust.

Cross References — For additional notice requirements in mortgage foreclosure procedures that apply to mortgage broker licensees under Section 81-18-1 et seq., see § 81-18-55.

CHAPTER 5

Recording of Instruments

Article 1.	General Provisions	89-5-1
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ARTICLE 1.

GENERAL PROVISIONS.

SEC.

- 89-5-3. Conveyances, mortgages; void if not lodged for record.
- 89-5-8. Affidavits relating to identification, marital status, heirship, etc. of party to instrument affecting real estate titles recordable; affidavit of scrivener's error recordable; admissibility.
- 89-5-24. Form of certain documents or instruments presented for recording; contents; exempt documents or instruments; additional recording fee for nonconforming documents or instruments.

§ 89-5-3. Conveyances, mortgages; void if not lodged for record.

Except as provided by Sections 89-5-101 through 89-5-113, all bargains and sales, and all other conveyances whatsoever of lands, whether made for passing an estate of freehold or inheritance, or for a term of years; and all instruments of settlement upon marriage wherein land, money, or other personalty should be settled or covenanted to be left or paid at the death of the party, or otherwise; and all deeds of trust and mortgages whatsoever, shall be void as to all creditors and subsequent purchasers for a valuable consideration without notice, unless they be acknowledged or proved and lodged with the clerk of the chancery court of the proper county, to be recorded in the same manner that other conveyances are required to be acknowledged or proved and recorded. Failure to file such instrument with the clerk for record shall prevent any claim of priority by the holder of such instrument over any similar recorded instrument affecting the same property, to the end that with reference to all instruments which may be filed for record under this section, the priority thereof shall be governed by the priority in time of the filing of the several instruments, in the absence of actual notice. But as between the parties and their heirs, and as to all subsequent purchasers with notice or without valuable consideration, said instruments shall nevertheless be valid and binding.

SOURCES: Codes, Hutchinson's 1848, ch. 42, art. 1 (2), (3); 1857, ch. 36, arts. 20, 21; 1871, §§ 2303, 2306; 1880, §§ 1211, 1212; 1892, §§ 2456, 2457; 1906, §§ 2786, 2787; Hemingway's 1917, §§ 2290, 2291; 1930, §§ 2143, 2147; 1942, §§ 864, 868; Laws, 1924, ch. 239; Laws, 2011, ch. 364, § 10, eff from and after July 1, 2011.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the first sentence by substituting "wherein land, money, or other personalty should be settled..." for "wherein land, money, or other personality should be settled...". The Joint Committee ratified the correction at its August 1, 2013, meeting.

JUDICIAL DECISIONS

3. Record of void instrument.
4. Effect of failure to record or delay in recording.
5. Miscellaneous.

3. Record of void instrument.

Warranty deed which was filed in the wrong judicial district was void as to a utility because the utility acquired its interest to the subject real property in a quick-take condemnation action without notice of the misfiled deed. *Harrison County Util. Auth. v. Walker*, — So. 3d —, 2014 Miss. App. LEXIS 19 (Miss. Ct. App. Jan. 14, 2014).

4. Effect of failure to record or delay in recording.

Decedent's ex-wife was not entitled to execute a judgment against real estate formerly jointly owned by the decedent and his widow but conveyed by four deeds to the widow's sister, although the late-

recorded deeds were void as to the ex-wife under Miss. Code Ann. § 89-5-3, because under Miss. Code Ann. § 15-3-101(b)(iii) (Supp. 2010) the property was not subject to a claim against only one joint tenant, and any right the ex-wife had to execute her judgment on the jointly held property ceased to exist upon the decedent's death. *Kelly v. Roby (In re Estate of Roby)*, 84 So. 3d 786 (Miss. Ct. App. June 28, 2011).

5. Miscellaneous.

If a landowner's spouse and adult child claimed an interest in a property which a utility sought to acquire in a quick-take condemnation action, their claim was against the landowner only because a warranty deed purporting to convey an interest in the subject property was misfiled in the wrong judicial district. *Harrison County Util. Auth. v. Walker*, — So. 3d —, 2014 Miss. App. LEXIS 19 (Miss. Ct. App. Jan. 14, 2014).

§ 89-5-8. Affidavits relating to identification, marital status, heirship, etc. of party to instrument affecting real estate titles recordable; affidavit of scrivener's error recordable; admissibility.

(1) Any affidavit relating to the identification, the marital status, the heirship, the relation, the death, or the time of death, of any person who is a party to any instrument affecting the title to real estate, or any affidavit relating to the identification of any corporation or other legal entity which is a party to any instrument affecting the title to real estate, duly sworn to and acknowledged before any officer or person authorized to administer an oath under the laws of this state, shall be recordable in the land records in the office of the chancery clerk in the county where the real estate is situated.

(2)(a) Notice of a typographical or other minor error in an instrument affecting the title to real estate may be given by recording an affidavit of scrivener's error. If an affidavit is conspicuously identified as an affidavit of scrivener's error, the chancery clerk shall index the affidavit in the general index under the names of the original parties to the instrument if they are identified in the affidavit, and in the sectional index as provided in the indexing instructions of the affidavit. Notice of the corrective information provided by the affiant is effective upon recordation. An affidavit under this paragraph (a) may be prepared only by an attorney licensed to practice law in this state who prepared any instrument in the chain of title to the subject real estate.

(b) The affidavit of scrivener's error shall be sworn to and acknowledged before any officer or person authorized to administer an oath under the laws of this state, and shall be recordable in the land records in the office of the chancery clerk in the county where the real estate is situated.

(c) If requested, the chancery clerk shall make a marginal notation on the instrument to which the affidavit refers.

(3) Any affidavit so recorded, or a certified copy thereof, shall be admissible as evidence in any action involving the instrument to which it relates or the title to the real estate affected by the instrument and shall be prima facie evidence of the facts stated therein and the marketability of the title to real estate.

SOURCES: Laws, 2007, ch. 444, § 1; Laws, 2013, ch. 461, § 1, eff from and after passage (approved Mar. 25, 2013.)

Amendment Notes — The 2013 amendment added (2) and redesignated former (2) as (3).

§ 89-5-13. Instruments of conveyance recorded for seven and ten years; acknowledgment valid.

JUDICIAL DECISIONS

1. In general.

Chancery court erred in relying on Miss. Code Ann. § 89-5-13 to find that two deeds were effective on the dates reflected in the acknowledgments, without ad-

ressing uncontradicted testimony regarding the intent of the parties or considering when the deeds were delivered and accepted. *Morrow v. Morrow*, 129 So. 3d 142 (Miss. 2013).

§ 89-5-24. Form of certain documents or instruments presented for recording; contents; exempt documents or instruments; additional recording fee for nonconforming documents or instruments.

(1) Except as otherwise provided in subsections (3) and (4), any document or instrument presented to the clerk of the chancery court for recording shall meet the following requirements:

(a) Each document or instrument shall consist of one or more individual pages printed only on one (1) side. The document or instrument shall not consist of pages that are permanently bound or in a continuous form and shall not have any attachment stapled or otherwise affixed to any page except as necessary to comply with statutory requirements. However, the individual pages of a document or instrument may be stapled together for presentation for recording. A label that is firmly attached with a bar code or return address may be accepted for recording.

(b) All documents must be printed or typed in a font no smaller than ten-point in size. If a document or instrument, other than a plat or survey or a drawing related to a plat or survey, presented for recording contains type

smaller than ten-point type, the document or instrument shall be accompanied by an exact typewritten or printed copy that meets the requirements of this section.

(c) Each document shall be of sufficient legibility to produce a clear reproduction. If a document or instrument, other than a plat or survey or a drawing related to a plat or survey, is not sufficiently legible to produce a clear reproduction, the document or instrument shall be accompanied by an exact typewritten or printed copy that meets the type size requirements of paragraph (b) and shall be recorded contemporaneously as additional pages of the document or instrument.

(d) Each document or instrument, other than a plat or survey or a drawing related to a plat or survey, shall be on white paper of not less than twenty-pound weight. All text within the document or instrument shall be of sufficient color and clarity to ensure that the text is readable when reproduced from the record.

(e) All signatures on a document or instrument shall be in black or blue ink and of sufficient color and clarity to ensure that the signatures are of sufficient legibility to produce a clear reproduction when the document or instrument is reproduced from the record. The corresponding name shall be typed, printed or stamped beneath the original signature. The typing or printing of a name or the application of an embossed or inked stamp shall not cover or otherwise materially interfere with any part of the document or instrument except where provided by law. Failure to print or type signatures as required in this paragraph does not invalidate the document or instrument.

(f) The first page of each document or instrument, other than a plat or survey or a drawing related to a plat or survey, shall have a top margin of at least three (3) inches of vertical space from left to right which shall be reserved for the recorder's use. All other margins on the document or instrument shall be a minimum of three-fourths ($\frac{3}{4}$) of one (1) inch. Nonessential information including, but not limited to, form numbers or customer notations may be placed in a margin other than the top margin. A document may be recorded if a minor portion of a seal or incidental writing extends into a margin. The recorder shall not incur any liability for failure to show a seal or information that extends beyond the margin of the permanent archival record.

(2) Each document or instrument, other than a plat or survey or a drawing related to a plat or survey, that is presented for recording and that contains any of the following information shall have that information on the first page below the three-inch margin:

(a) The name, physical business mailing address and business or employment telephone number of the individual who prepared the document; and the name, mailing address and telephone number of every grantor, grantee, borrower, beneficiary, trustee or other party to the instrument.

(b) A return address.

(c) The title of the document or instrument.

(d) Any address and telephone number required by Section 27-3-51, Mississippi Code of 1972.

(e) The legal description of the property or indexing instruction per Section 89-5-33(3). If there is insufficient space on the first page for the entire legal description or the entire indexing instruction, immediately succeeding pages shall be used.

(3) The following documents or instruments are exempt from the format requirements of this section:

(a) A document or instrument that was executed before July 1, 2009.

(b) A military separation document or instrument.

(c) A document or instrument executed outside the United States.

(d) A certified copy of a document or instrument issued by a court or governmental agency, including a vital record.

(e) A document or instrument where one (1) of the original parties is deceased or otherwise incapacitated.

(f) A document or instrument formatted to meet court requirements.

(g) A federal tax lien.

(h) A filing under the Uniform Commercial Code.

(4) The recorder shall record a document or instrument that does not substantially conform to the format standards specified in subsections (1) and (2) of this section upon payment of an additional recording fee of Ten Dollars (\$10.00) per document or instrument. The fee shall be charged only for documents or instruments dated on or after July 1, 2009; this fee may not be charged for those documents or instruments specifically exempted in subsection (3).

(5) Failure to conform to the format standards specified in this section does not affect the validity or enforceability of the document or instrument.

SOURCES: Laws, 2008, ch. 508, § 1; Laws, 2011, ch. 416, § 1; Laws, 2014, ch. 309, § 1, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added “the name, mailing address and telephone number” following “prepared the document” in (2)(a).

CHAPTER 7

Landlord and Tenant

§ 89-7-51. Lien of landlord.

JUDICIAL DECISIONS

12. Miscellaneous.

Render of judgment in favor of a tenant on the tenant’s unlawful-reentry issue was appropriate because the evidence showed that the landlord acted without

authority in using self-help to reenter the leased property, as the lease did not provide for such action, and failed to provide the tenant with a notice and hearing before reentering the property. *Crowell v.*

Butts, — So. 3d —, 2013 Miss. App. LEXIS 866 (Miss. Ct. App. Dec. 10, 2013).

§ 89-7-55. Attachment for rent and supplies; who entitled to and for what.

JUDICIAL DECISIONS

1. In general.

Render of judgment in favor of a tenant on the tenant's unlawful-reentry issue was appropriate because the evidence showed that the landlord acted without authority in using self-help to reenter the

leased property, as the lease did not provide for such action, and failed to provide the tenant with a notice and hearing before reentering the property. *Crowell v. Butts*, — So. 3d —, 2013 Miss. App. LEXIS 866 (Miss. Ct. App. Dec. 10, 2013).

CHAPTER 12

Uniform Disposition of Unclaimed Property Act

SEC.

89-12-59. Certain unclaimed United States savings bonds escheat to state; procedures.

§ 89-12-59. Certain unclaimed United States savings bonds escheat to state; procedures.

(1) Notwithstanding the provisions of any other section of law, United States savings bonds which are unclaimed property and subject to the provisions of this chapter shall escheat to the State of Mississippi three (3) years after becoming unclaimed property by virtue of the provisions of this chapter, and all property rights and legal title to and ownership of such United States savings bonds or proceeds from such bonds, including all rights, powers and privileges of survivorship of any owner, co-owner or beneficiary, shall vest solely in the State of Mississippi according to the procedure set forth in subsections (2) through (5) of this section.

(2) Within one hundred eighty (180) days after the three (3) years prescribed in subsection (1) of this section, if no claim has been filed in accordance with the provisions of this chapter for such United States savings bonds, the State Treasurer shall commence a civil action in the Circuit Court of the First Judicial District of Hinds County for a determination that such United States savings bonds shall escheat to the State of Mississippi. The State Treasurer may postpone the bringing of such action until sufficient United States savings bonds have accumulated in the State Treasurer custody to justify the expense of such proceedings.

(3) If no person shall file a claim or appear at the hearing to substantiate a claim or where the court determines that a claimant is not entitled to the property claimed by such claimant, then the court, if satisfied by evidence that the State Treasurer has substantially complied with the laws of the State of Mississippi, shall enter a judgment that the subject United States savings

bonds have escheated to the State of Mississippi, and all property rights and legal title to and ownership of such United States savings bonds or proceeds from such bonds, including all rights, powers and privileges of survivorship of any owner, co-owner or beneficiary, shall vest solely in the State of Mississippi.

(4) The State Treasurer shall redeem such United States savings bonds escheated to the State of Mississippi and the proceeds from such redemption of United States savings bonds shall be deposited in the State General Fund. The State Treasurer shall not deposit the proceeds from the redemption of the United States savings bonds in the Abandoned Property Fund or the Abandoned Property Claims Payment Fund in accordance with the provisions of Section 89-12-37.

(5) Any person making a claim for the United States savings bonds escheated to the State of Mississippi under this subsection, or for the proceeds from such bonds, may file a claim in accordance with the provisions of this chapter. Upon providing sufficient proof of the validity of such person's claim, the State Treasurer may pay such claim in accordance with the provisions of this chapter.

SOURCES: Laws, 2014, ch. 431, § 8, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal statutory reference by substituting “this chapter” for “Section 89-12-57 et seq.” and making related punctuation changes throughout the section. The Joint Committee ratified the correction at its July 24, 2014, meeting.

Editor's Note — This section was added by Section 8, Laws of 2014, ch. 431, effective from and after July 1, 2015. The effective date of Laws of 2014, ch. 431, was subsequently amended by Laws of 2014, ch. 477, § 7, which provides:

“SECTION 7. Section 9 of Senate Bill No. 2796, 2014 Regular Session [Chapter 431], is amended as follows:

“Section 9. Section 8 of this act shall take effect and be in force from and after July 1, 2014, and the remaining sections of this act shall take effect and be in force from and after July 1, 2015.”

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